

STATE OF MICHIGAN
IN THE SUPREME COURT

HOME-OWNERS INSURANCE COMPANY,
And AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs/Counter-
Defendants/Appellants/
Cross-Appellees,

Supreme Court No. 156240
Court of Appeals No. 331934
Ingham Circuit No. 15-25-CK

v

RICHARD JANKOWSKI, and
JANET JANKOWSKI,

Defendants/Counter-Plaintiffs/Appellees/
Cross-Appellants.

**PLAINTIFF/COUNTER-DEFENDANT/APPELLANT/CROSS-APPELLEE HOME-
OWNERS INSURANCE COMPANY'S AND PLAINTIFF/COUNTER-DEFENDANT/
CROSS-APPELLEE AUTO-OWNERS INSURANCE COMPANY'S COMBINED
ANSWER IN OBJECTION TO APPELLEES/CROSS-APPELLANTS'
APPLICATION FOR LEAVE TO APPEAL**

Respectfully submitted,

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JUDGMENT APPEALED FROM

The Jankowskis appeal from a May 11, 2017, unpublished opinion of the Court of Appeals, which affirmed the portion of the trial court's summary disposition ruling in favor of Auto-Owners and Home-Owners, reversed the portion of the trial court's summary disposition ruling in favor of the Jankowskis, and remanded to the trial court for entry of an order consistent with the opinion. The trial court's opinion is attached as Exhibit A. The summary disposition hearing transcript is attached as Exhibit B. The trial court's opinion on the Jankowskis' motion for reconsideration is attached as Exhibit D. The trial court's opinion on the insurers' motion for reconsideration is attached as Exhibit C. The Court of Appeals opinion is attached as Exhibit E. The Jankowskis moved for reconsideration, which was denied on June 22, 2017. See Exhibit F. The Jankowskis' application for leave to appeal in this Court is timely filed. MCR 7.305(C)(2)(b). While a party may seek leave to appeal from an opinion of the Court of Appeals, the application must show grounds for granting leave. MCR 7.305(B).

LACK OF GROUNDS FOR APPEAL

The Jankowskis never identify what subpart of MCR 7.305(B) under which they claim grounds for appeal. Their citation to 1949 PA 300, Ch II, § 216, is incorrect; MCL 257.216 does not state that it applies only to "certain motor vehicles operated upon the public highways of this state." Presumably, the Jankowskis mean the preamble to the Michigan Vehicle Code. However, there are two things wrong with their assertion. First, while a preamble may explain the purpose of an ambiguous statutory provision, it does not control the meaning of an unambiguous provision. And there is nothing ambiguous about MCL 257.216, or the remaining statutory provisions, which dispel the Jankowskis' reliance on the preamble. Second, the Jankowskis' "selective" quotation misleads this Court by omitting a significant portion of the

preamble that is not limited to “this state.” Moreover, their reliance upon the Secretary of State’s interpretation of the Motor Vehicle Code is misplaced because (a) the interpretation does not say what they claim, (b) the interpretation does not have the force of law, and (c) an interpretation cannot overcome the logical reading of a statute. The Jankowskis’ constitutional argument was not only unpreserved, it was found meritless by the Court of Appeals. The issues in this case were correctly decided 25 years ago in *Wilson v League Gen Ins Co, infra*. There are no jurisprudential grounds that warrant granting leave to appeal.

COUNTER-STATEMENT OF QUESTION INVOLVED

- I. Should the provisions of the motor vehicle code be upheld as written when:**
- A. Preambles may explain the purpose of an ambiguous statutory provision, but do not control the meaning of an unambiguous provision, particularly when supported by other statutes**
 - B. The Jankowskis' unpreserved constitutional arguments are inaccurate, and no Constitutional provision precludes a state from exercising control over its citizens**
 - C. The Michigan Secretary of State did not address the issue presented here, and even if it did, it does not have the force of law and cannot overcome the logical reading of the statutory provisions**
 - D. Published, 25-year precedent has already upheld the statute as written?**

Plaintiffs/Appellees say: Yes.

Defendants/Appellants say: No.

Trial Court said: Yes

Court of Appeals said: Yes

INTRODUCTION

Michigan residents injured in owned vehicles uninsured for Michigan PIP may not collect Michigan PIP benefits. The Jankowskis, Michigan residents, were injured in Florida while driving a vehicle they owned, which was insured only by a Florida policy for Florida no-fault coverage, and which was not insured for Michigan PIP coverage. The trial court correctly ruled under *Wilson v League Gen Ins Co, infra*, that Mr. Jankowski, the titled owner of the accident vehicle, was not entitled to PIP coverage under MCL 500.3113(b). However, the trial court erred in concluding that Mrs. Jankowski was not an owner-by-use of the vehicle even though all evidence pointed to ownership by use. The Court of Appeals correctly upheld the trial court's ruling as to Mr. Jankowski, and correctly concluded that the ruling applied to Mrs. Jankowski because she was a statutory owner by use.

While the Jankowskis belatedly raise several unpreserved arguments, the authority they cite in purported support of those arguments does not, in actuality, support them. They have not established that MCL 257.216 is ambiguous. They have not established a constitutional violation. They have not established their public policy argument. They have not established that they did not have to register their leased vehicle in Michigan. They have not established that they were entitled to Michigan PIP benefits.

Leave to appeal should be denied.

COUNTER-STATEMENT OF FACTS

Richard Jankowski and his wife Janet Jankowski own one home in Michigan and another in Naples, Florida.¹ They consider Michigan to be their permanent domicile.² They own vehicles in both Florida and Michigan; the Michigan vehicles were insured for Michigan no-fault coverage through Home-Owners Insurance Company, while the Florida vehicles were insured for Florida coverage through a policy issued by Allstate.³

In November 2013, the Jankowskis drove their 2006 Lexus RX 350 from Michigan to Florida.⁴ The RX 350 was insured for Michigan PIP by Home-Owners. In January 2014, while in Florida, the Jankowskis traded the RX 350 in for the vehicle ultimately involved in the accident, a 2014 Lexus GX460 (hereinafter “accident vehicle”).⁵ While at the Florida dealership, the Jankowskis contacted their Michigan Home-Owners Insurance agent and cancelled insurance on the 2006 Lexus RX 350.⁶

Mr. Jankowski deferred to his wife as to whether they sought Michigan coverage for the Florida vehicle. Although he believed that the Michigan agent was unable to sell insurance in Florida, he did not know why.

Q. And that Allstate policy was the policy that was intended to cover that vehicle in Florida that you were driving, that Lexus that you purchased?

A. Yes.

Q. Okay. And at any time did you ask your agent here in Michigan to provide coverage for that vehicle that was in Florida?

¹ Deposition of Richard Jankowski, 7/29/15, p 5, attached as Exhibit B to plaintiffs’ summary disposition motion, 11/3/15, attached hereto as Exhibit G.

² Richard Dep, p 5; Deposition of Janet Jankowski, 7/29/15, p 6, attached as Exhibit C to plaintiffs’ summary disposition motion, 11/3/15, attached hereto as Exhibit H.

³ Richard Dep, pp 7-10.

⁴ Richard Dep, pp 15-16. (Record correction, changing date from 2015 to 2014 for all questions, on pp 38-39).

⁵ Richard Dep, pp 13, 16.

⁶ Richard Dep, p 17.

A. I'll defer to my wife on that, but I believe that he wasn't able to sell insurance in Florida.

Q. Why not? Did he give you a reason that you know of?

A. No.⁷

He acknowledged, however, that nobody told him he was purchasing Michigan no-fault coverage for the accident vehicle:

Q. Did the agent in Florida represent to you that you were purchasing Michigan No-Fault insurance to cover that vehicle in Florida?

A. I don't believe we had any conversation about that.⁸

According to Mrs. Jankowski, the Michigan agent told them he could not write a policy for a vehicle registered in Florida.

Q. So Mr. McCarthy didn't misrepresent to you that you were going to have insurance in Michigan, did he, on this vehicle you bought?

A. No, he didn't say anything about our insurance not covering anything. He just said he couldn't write or take a policy for Florida.

Q. Okay. When he told you he couldn't write a policy for the car in Florida, what did you think that meant?

A. I had no idea. I just thought he meant he couldn't give me the paperwork.⁹

Both Michigan and Florida require an agent to be licensed to sell insurance before the agent may write a policy in those states. See MCL 500.1201a, Fla Stat 626.112.

The Jankowskis called their home insurance agent in Florida and obtained a Florida policy of insurance through Allstate on the accident vehicle.¹⁰ The Allstate policy provided only Florida PIP coverage "[i]n accordance with the Florida Motor Vehicle No-Fault Law."¹¹ Mrs. Jankowski testified that she did not think about whether the Florida policy had Michigan no-fault coverage; however, none of the agents told her she was purchasing Michigan no-fault coverage:

⁷ Richard Dep, pp 21-22.

⁸ Richard Dep, p 22.

⁹ Janet Dep, pp 14-15.

¹⁰ Janet Dep, pp 14-15, 18.

¹¹ Florida Allstate policy, attached as Exhibit 5 to defendants' response to plaintiffs' summary disposition motion and request for cross-relief pursuant to MCR 2.116(I)(2), 12/2/15.

Q. Okay. Were you ever under the impression that the insurance that you were purchasing in Florida to cover this brand new vehicle was going to be Michigan No-Fault insurance?

A. I never thought about it.

Q. Okay. Did any of the agents tell you that that's what you were purchasing?

A. No.¹²

As of the May 25, 2014 date of the Florida accident with the Florida-insured accident vehicle, the Jankowskis also owned a 2005 Audi A4 and a 2009 Lexus GS350. Those were garaged in Michigan and insured for Michigan PIP coverage through Home-Owners Insurance Company. They had two other Florida vehicles, including the accident vehicle, which were garaged, titled, registered, and insured in Florida.¹³ The Florida vehicles were not insured for Michigan PIP coverage but were insured by Allstate through the Florida policy.¹⁴

On May 25, 2014, the Jankowskis were returning from their anniversary dinner at a Florida restaurant.¹⁵ Mr. Jankowski was driving and Mrs. Jankowski was in the passenger seat.¹⁶ The Jankowskis were driving north through an intersection controlled by a traffic light, when they were struck by a vehicle driven by Adam Ross Rego.¹⁷

The Jankowskis submitted a claim under the Florida Allstate policy, which paid \$10,000 (the Florida PIP limits for medical) for each regarding the injuries sustained.¹⁸ The majority of the Jankowskis' medical bills were paid by their primary health insurer Blue Cross Blue Shield.¹⁹ The Jankowskis then submitted a PIP claim to Home-Owners,²⁰ even though Exclusion

¹² Janet Dep, p 17.

¹³ Richard Dep, pp 8-10.

¹⁴ Allstate policy, p 14.

¹⁵ Richard Dep, pp 27, 29.

¹⁶ Richard Dep, p 30.

¹⁷ Florida traffic crash report.

¹⁸ Janet Dep, pp 37-38.

¹⁹ Janet Dep, pp 38-39.

j of the Home-Owners policy excludes coverage for injuries sustained by an insured when occupying an owned vehicle that did not have the coverage under the Michigan no-fault act:

2. EXCLUSIONS

We will not pay personal injury protection benefits for:

* * *

- j. bodily injury sustained by the named insured while occupying, or through being struck by while not occupying, any motor vehicle owned or registered by the named insured and which does not maintain an insurance policy providing benefits under Chapter 31 of the Michigan Insurance Code.²¹

The Jankowskis did not have Michigan PIP coverage on the accident vehicle under MCL 500.3101. In addition to their Michigan PIP claim to Home-Owners, they also made a claim for underinsured motorist (UIM) benefits under the policy.²² Home-Owners Insurance Company and Auto-Owners Insurance Company brought the instant declaratory judgment action seeking a determination the insurers did not owe PIP or UIM benefits to the Jankowskis for the Florida accident involving the accident vehicle garaged in Florida, registered in Florida, and insured only for Florida coverage. The basis was that the accident vehicle was not a covered vehicle under the Michigan auto policy, and their umbrella policy issued by Auto-Owners was for liability coverage, not UIM.²³ In their answer, the Jankowskis admitted that the Auto-Owners umbrella policy did not cover UIM.

²⁰ Application for benefits, 6/19/14, attached as Exhibit E to plaintiffs' summary disposition motion, 11/3/15.

²¹ Excerpt of NO-FAULT INSURANCE ENDORSEMENT, form 19942 (1-10)Y, page 4 of 6, attached as Exhibit H (also included in Exhibit G as part of the policy) to plaintiffs' summary disposition motion, 11/3/15, attached hereto as Exhibit I.

²² Complaint, 8/12/14, ¶¶ 5, 6, 12; Answer, ¶¶ 5, 6, 12, 15.

²³ *Id.*

On November 3, 2015, Home-Owners and Auto-Owners moved for summary disposition. Home-Owners argued that the Jankowskis were not entitled to PIP benefits because they were injured while occupying a vehicle they owned for which the security required by MCL 500.3101 was not in effect, and which was specifically excluded from coverage under the policy exclusions. Auto-Owners based its part of the motion on the admission that the umbrella did not cover UIM.

The Jankowskis opposed the motion and sought summary disposition under MCR 2.116(I)(2) on December 2, 2015. They argued that they were entitled to Michigan PIP coverage for the Florida accident under MCL 500.3111, because they were named insureds on the auto policy issued by Home-Owners. They claimed that they were not required to purchase Michigan no-fault insurance for vehicles never used in Michigan,²⁴ and therefore were not excluded from coverage under MCL 500.3113(b). They claimed that Home-Owners' policy language was contrary to the no-fault act and could not be enforced. While they conceded that Mr. Jankowski was not entitled to recover UIM benefits because he was the titled owner of the vehicle, they argued that Mrs. Jankowski was not an owner and was therefore entitled to UIM coverage.

On December 4, 2015, Home-Owners and Auto-Owners filed a reply to support their motion.²⁵ They pointed out that the Court in *Wilson v League Gen Ins Co*, 195 Mich App 705, 709; 491 NW2d 642 (1992), had already rejected the Jankowskis' argument they did not have to insure their out-of-state vehicle in order to collect Michigan PIP. They additionally pointed out that MCL 500.3113(b) linked the required security solely to the vehicle involved in the accident,

²⁴ Although the Jankowskis make much of the fact that the accident vehicle was not driven outside of the State of Florida, they do not explain how they planned to get back home to Michigan when they traded in the vehicle they drove from Michigan for the accident vehicle.

²⁵ Plaintiffs' reply brief and brief in opposition to defendants' request for cross-relief pursuant to MCR 2.116(I)(2), 12/4/15.

and they disputed the Jankowskis' interpretation of case law. Regarding UIM benefits, the insurers pointed out that Mrs. Jankowski testified that she had the right to use the accident vehicle for over 30 days, she had her own set of keys, and she did not have to ask permission to use the vehicle; thus, Mrs. Jankowski was injured in a vehicle she owned that was uninsured for UIM coverage and was not entitled to recover UIM benefits.

The motion was heard December 9, 2015.²⁶ Counsel for the insurers pointed out there was no exception in MCL 500.3113 for MCL 500.3111.²⁷ He pointed out that the motor vehicle code provision pertaining to titling, sale, transfer, and registration of motor vehicles was not limited to roads in Michigan, and the only exception to the registration requirement pertained to nonresidents of Michigan.²⁸ He asserted that Mrs. Jankowski was an owner-by-use excluded from both PIP and UIM benefits.

Counsel for the Jankowskis argued there were two ways to be covered under MCL 500.3111: as a named insured, or as an occupant of a vehicle actually insured with no-fault. They would only be disqualified under MCL 500.3113(b) if they failed to obtain the insurance required by MCL 500.3101; but they did not have to obtain insurance under §3101 because they did not have to register the vehicles in Michigan under MCL 257.215 and MCL 257.216.

The trial court indicated it was confused and unfamiliar with the provisions making a person an owner by use.²⁹ It took the motions under advisement.³⁰ On January 4, 2016, the trial court issued an opinion and order that granted the insurers' motion on the ownership exclusion

²⁶ M Tr 12/9/15, attached as Exhibit B. At the outset, counsel for Auto-Owners explained that Auto-Owners had been brought into the suit because it was initially believed that the umbrella policy issued by Auto-Owners might afford UIM coverage, but that there was no dispute that the umbrella policy did not provide such coverage. *Id.* at 3-4.

²⁷ M Tr 12/9/15, p 6.

²⁸ M Tr 12/9/15, pp 7-8.

²⁹ M Tr 12/9/15, pp 16-18.

³⁰ M Tr 12/9/15, pp 21-22.

and granted defendants' motion on Mrs. Jankowski's entitlement to UIM benefits.³¹ The court's order held (a) that Mr. Jankowski was excluded from coverage under MCL 500.3113(b), and (b) that Mrs. Jankowski was not an owner for MCL 500.3113(b) and was entitled to UIM benefits. Implicit in the trial court's ruling was that Mrs. Jankowski was entitled to PIP coverage because not an owner under MCL 500.3113(b).

Both parties moved for reconsideration. Home-Owners and Auto-Owners asked the court to reconsider its implicit ruling that Mrs. Jankowski was not an owner, citing two unpublished cases and one published case holding she was an owner by use.³² The trial court denied this motion for reconsideration on January 29, 2016.³³ The Jankowskis sought reconsideration of the court's ruling that MCL 500.3113(b) applied, arguing for the first time that the accident vehicle was a foreign leased vehicle not required to be registered under MCL 257.218(3), and arguing that *Wilson v League Gen Ins Co* was no longer good law because it relied on the doctrine of absurd results.³⁴ The trial court denied the Jankowskis' motion for reconsideration on March 1, 2016.³⁵

Home-Owners timely filed a claim of appeal in the Court of Appeals on March 11, 2016, with regard to the court's ruling that Mrs. Jankowski was not an owner by use. The Jankowskis filed a cross-appeal. In their cross-appeal, the Jankowskis argued that the preamble to the Motor Vehicle Code, MCL 257.1, *et seq.* required that MCL 257.216 be interpreted to apply only to Michigan highways. They argued that the right to receive no-fault PIP benefits is personal in nature, and that entitlement to PIP benefits was not contingent upon the person occupying a

³¹ Opinion and order, 1/4/16, attached as Exhibit A.

³² Plaintiffs' motion for partial reconsideration, 1/21/16.

³³ Exhibit C.

³⁴ Jankowskis' motion for reconsideration, 1/25/16.

³⁵ Exhibit D.

vehicle that was insured with PIP, but they ignored a significant body of case law stating that the *exclusion* from PIP benefits under MCL 500.3113(b) applies if the person's uninsured *vehicle* was involved in the accident. Although the Jankowskis had made vague and amorphous statements at the trial court level, claiming unspecified constitutional complications and implications, these statements contained no specifics as to how or why these purported constitutional concerns existed, and no citation to authority. Thus, the Jankowskis' constitutional arguments were unpreserved in the Court of Appeals. Nevertheless, Home-Owners pointed out the errors of the constitutional arguments.

The Court of Appeals agreed with Home-Owners that Mrs. Jankowski was an owner by use and therefore precluded by MCL 500.3113(b) from receiving Michigan no-fault benefits. The Court disagreed with the Jankowskis' argument that because the vehicle involved in the accident was never driven in Michigan, it was not required to be registered in Michigan, and thus was not required to carry the security required in MCL 500.3101(1). The Court declined to address the Jankowskis' unpreserved arguments because it concluded that the arguments lacked merit. The Court then denied the Jankowskis' motion for reconsideration.

LAW AND ARGUMENT

I. Under unambiguous statutory provisions, the Jankowskis are not entitled to Michigan PIP benefits.

A. Standard of Review

Decisions regarding summary disposition motions are reviewed de novo. *In re Bradley Estate*, 494 Mich 367, 376; 835 NW2d 545 (2013). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for the claim. *American Home Assurance Co v Michigan Catastrophic Claims Ass'n*, 288 Mich App 706, 716; 795 NW2d 172 (2010). The motion should be granted if, after considering the submitted admissible evidence in a light most favorable to the non-moving party, the court concludes there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.* at 717. Issues of statutory interpretation are reviewed de novo. *Boyle v Gen Motors Corp*, 468 Mich 226, 229-230; 661 NW2d 557 (2003).

"Generally, an issue is not properly preserved if it is not raised before, and addressed and decided by, the trial court." *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005) The purpose of the appellate preservation requirements is to prompt litigants to act in the trial court to prevent error and eliminate its prejudice, or to generate a record of the error and its prejudice. *Local Emergency Fin Assistance Loan Bd v Blackwell*, 299 Mich App 727, 737; 832 NW2d 401 (2013). This Court has repeatedly declined to consider arguments not presented at a lower level, including those relating to constitutional claims. See *In re Forfeiture of Certain Personal Property*, 441 Mich 77, 84; 490 NW2d 322 (1992); *Butcher v Treasury Dep't*, 425 Mich 262, 276; 389 NW2d 412 (1986); *Dagenhardt v Special Machine & Engineering, Inc*, 418 Mich 520; 345 NW2d 164 (1984); *Ohio v Dep't of Taxation v Kleitch Bros, Inc*, 357 Mich 504, 516; 98 NW2d 636 (1959).

B. The Jankowskis, as Michigan residents, were required to insure all their vehicles for Michigan PIP coverage

“The language in MCL 500.3113(b) precluding recovery of PIP benefits links the security or insurance requirement to the vehicle only and not the person.” *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 33, 44; 748 NW2d 574 (2008). “[W]hen none of the owners maintains the requisite coverage, no owner may recover PIP benefits.” *Barnes v Farmers Ins Exch*, 308 Mich App 1, 8-9; 862 NW2d 681 (2014). The statute precludes PIP coverage if, at the time of the accident,

The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect. (Emphasis added). [MCL 500.3113(b)]

MCL 500.3101 requires an owner to maintain PIP coverage on a vehicle required to be registered in this state. Whether a vehicle must be registered is set forth in the Motor Vehicle Code. MCL 257.216 clarifies that “[e]very motor vehicle . . . when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act . . . except for the following. . . .” There is no limitation in MCL 257.216 to streets or highways in Michigan. Instead, this general rule is broadly written to cover all vehicles driven on all streets. The Motor Vehicle Code then provides exceptions for those vehicles not required to be registered indicating the Legislature’s intent that the general rule be broadly applied and the exceptions to be narrowly interpreted. Cf. *Wechsler v Wayne County Rd Comm’n*, 215 Mich App 579, 597; 546 NW2d 690 (1996) (“statutory exceptions to general rules are narrowly construed in order that they not swallow the general rule”). See also *Universal Underwriters Ins Co v State Farm Mut Auto Ins Co*, 172 Mich App 342; 431 NW2d 255; 1988 (“The Legislature has authorized a narrow exception to the general rule of comprehensive automobile liability insurance allowing for exclusion of coverage when the vehicle is operated by a specifically

named individual”). At least one legislative analysis of MCL 257.216 confirms the Legislature’s intent :

The Code currently specifies that *every motor vehicle . . . when driven or moved on a highway, is subject to the Code’s registration and certificate of title provisions, except for those vehicles specifically exempted* under the Code. [Senate Fiscal Analysis, HB 5044, February 28, 1996 (emphasis added).]

None of the exceptions in the Motor Vehicle Code, however, pertain to the Jankowskis. For instance, one exception, MCL 257.243 permits a *nonresident* owner to drive a vehicle not registered in Michigan, if the vehicle is properly registered in the state where the owner resides. Unlike the broad reach of MCL 257.216, this exception is limited to operation “within this state.” “The omission of language from one part of a statute that is included in another part should be construed as intentional.” *Mericka v Dep’t of Community Health*, 283 Mich App 29, 39; 770 NW2d 24 (2009). No similar exception is provided for a Michigan resident. However, even MCL 257.243 makes clear that the vehicle would otherwise be subject to registration in Michigan:

A *nonresident owner*, except as otherwise provided in this section, owning any foreign vehicle of a type *otherwise subject to registration* under this act may operate or permit the operation of the vehicle within this state without registering the vehicle in, or paying any fees to, this state if the vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration certificate and registration plate or plates issued for the vehicle in the place of residence of the owner. [*Id.* (emphasis added).]

“‘Subject to motor vehicle registration’ means not that the vehicle is *capable* of being registered but rather that it *must* be registered if it is to be driven on a highway.” *Coffey v State Farm Mut Automobile Ins Co*, 183 Mich App 723, 729; 455 NW2d 740 (1990), citing *Reaver v Westwood*, 148 Mich App 343; 384 NW2d 156 (1986). And the definition of foreign vehicle likewise indicates that all vehicles must be registered:

(1) “Foreign vehicle” means a vehicle of a type *required to be registered under this act* and *brought into this state from another state, territory, or country*

other than in the ordinary course of business by or through a manufacturer or dealer, and not registered in this state. [MCL 257.18 (emphasis added).]

Michigan residents who acquire a vehicle in another state but do not insure it with Michigan PIP are barred by MCL 500.3113(b) from receiving Michigan PIP benefits. In *Wilson v League Gen Ins Co*, 195 Mich App at 709, the Court of Appeals held that a Michigan resident must register and maintain Michigan PIP coverage on an owned vehicle regardless whether the vehicle has been used in Michigan. In *Wilson*, a Michigan resident who lived with her mother in Michigan had purchased a vehicle in Texas where she was going to school. The plaintiff daughter was the owner of the vehicle she had purchased in Texas. She did not insure the vehicle with a Michigan PIP policy. On the way to her mother's house in Michigan, the daughter was involved in a motor vehicle accident in Tennessee. Because her mother had PIP coverage on her household automobiles, the daughter sought PIP benefits under her mother's policy on the basis that she was a resident relative of her mother's household. In making this PIP claim, the daughter argued that she did not have to register her own vehicle or insure the vehicle under § 3101 because the vehicle was not routinely driven in Michigan. She asserted that she did not have to register or insure her vehicle under the no-fault act because MCL 257.216 only required registration for vehicles used in Michigan on Michigan highways. This is the same basic argument that the Jankowskis are making here.

The Court of Appeals in *Wilson* unequivocally rejected this assertion, saying, “[w]e reject plaintiff's interpretation of § 3113(b) and MCL 257.216.” The Court stated that MCL 257.216 “does not specifically limit the requirements of § 3113(b) of the no-fault act only to cars driven on Michigan highways. Because the language of § 3113(b) is unambiguous, we will not read additional provisions into the language.” 195 Mich App at 709. (Emphasis added.) Because the

security required by MCL 500.3101 was not in effect, the plaintiff was not entitled to PIP benefits. *Wilson*, 195 Mich App at 709-710.

The *Wilson* Court gave a second reason, Michigan public policy, and explained that a contrary ruling would “produce the absurd result that *a person who is covered by a no-fault policy in this state could own and fail to insure several other vehicles in other states and still be permitted to recover under the one insurance policy for accidents occurring in the other states involving the vehicles for which security had not been obtained.*” *Wilson*, 195 Mich App at 709.

The Court of Appeals in *Guraj v Connecticut Indemnity Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2006 (Docket No. 257509),³⁶ characterized *Wilson* as having “implicitly concluded that Michigan residents are required to register their vehicles in the state,” and similarly concluded that a Michigan resident plaintiff who only obtains an out-of-state policy for his vehicle is barred from PIP by MCL 500.3113(b), notwithstanding not operating the vehicle in Michigan, and although the accident occurred out of state. Under *Wilson*, as explained by *Guraj*, Michigan residents must register and maintain Michigan PIP insurance on their owned vehicles under MCL 500.3101 regardless whether the vehicles are ever used in Michigan. If they do not have Michigan PIP on their out-of-state vehicle, they are barred from recovering Michigan PIP benefits.

³⁶ Exhibit J. The undersigned did not find a published case with analogous facts that similarly characterized *Wilson*, or has held directly that Michigan residents are required to register in Michigan and insure vehicles acquired in other states for Michigan no-fault. In *Witt v American Family Mut Ins Co*, 219 Mich App 602, 607; 557 NW2d 163 (1996), the Court of Appeals held that the plaintiff, “as a Michigan resident, was required to register his vehicle in Michigan, MCL 257.216, and was required to maintain no-fault insurance, MCL 500.3101(1). Having failed to do so, under §3113(b) he was not entitled to no-fault benefits” regardless of the fact that the plaintiff had insured his Iowa-registered vehicle with an Iowa policy. However, *Witt* is not directly on point because it involved an accident that occurred in Michigan.

Wilson makes sense. Those who do not purchase Michigan PIP coverage on their vehicles are not entitled to Michigan PIP benefits. Those who purchase the insurance coverage of another state are only entitled to the coverage of the other state. A vehicle owner is entitled only to the coverage purchased for the vehicle, MCL 500.3113(b). An insurer is not liable for a risk it never collected premiums on or agreed to assume. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992).

While in the lower court the Jankowskis decried the *Wilson* Court's "absurd results" reasoning as no longer valid rationale in their motion for reconsideration, they did not address the *Wilson* Court's primary basis for its ruling: it would not read language that did not exist into an unambiguous statute. The Court of Appeals merely added that to read the non-existent language into the statute would produce absurd results. The Court's logic is sound: it is indeed absurd for a Michigan resident to claim nonresident vehicle status to avoid the registry and insurance procurement requirements, yet still attempt to collect Michigan PIP as a Michigan resident once an accident occurs outside Michigan in a vehicle owned but not insured for Michigan PIP. The legislative intent embodied in MCL 500.3113(b) ties coverage to an owner's insured vehicle, as does the Catastrophic Claim per car assessment in MCL 500.3104(7)(d).

C. The Jankowskis' Florida policy did not meet the requirements for Michigan PIP coverage

The Florida policy procured by the Jankowskis did not provide PIP as required by MCL 500.3101. Instead, it provided benefits "[i]n accordance with the Florida Motor Vehicle No-Fault Law." As explained in *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38, 43; 592 NW2d 395 (1998), a policy issued by an out-of-state insurer with no knowledge that the insured is a Michigan resident will not be reformed to provide Michigan PIP benefits:

It is common knowledge that Michigan "no-fault" automobile insurance policies are generally more expensive than automobile insurance policies from

states such as Indiana that do not have "no-fault" laws. To generally hold that such an out-of-state policy entered into by a Michigan resident would be treated as if it were a Michigan "no-fault" policy might well assist some unscrupulous Michigan residents to obtain a Michigan no-fault policy at the lower rate of an out-of-state policy. We will not construe § 3012 in such a manner and, thus, we conclude that it has no application to the Indiana insurance policy that Allstate issued to its insured in this case.

Florida only requires \$10,000 of no-fault medical coverage. Fla Stat 627.736(1). There are no limits for Michigan PIP in MCL 500.3107(1)(a). That is why the Jankowskis claimed Michigan PIP after collecting the \$10,000 maximum benefits from Allstate. The Jankowskis' Florida policy on the accident vehicle did not meet the insurance requirements of MCL 500.3101. Where any of the required coverages in Michigan are absent, the disqualification of MCL 500.3113(b) is triggered as to an owner. See *Bronson Methodist Hosp v Michigan Assigned Claims Facility*, 298 Mich App 192, 201; 826 NW2d 197 (2012) (PIP barred by MCL 500.3113(b) where owner of accident vehicle was lacking liability coverage for owner as a named excluded driver.)

D. The Jankowskis have failed to establish that they were exempted from registering their vehicle in Michigan.

1. The Preamble is not authoritative because MCL 257.216 unambiguously requires the Jankowskis to register their vehicle in Michigan.

The Jankowskis argue that the preamble to the Motor Vehicle Code, MCL 257.1, *et seq.* requires that MCL 257.216 be interpreted to apply only to Michigan highways. This is incorrect. While a preamble may explain the purpose of an ambiguous statutory provision, it does not control the meaning of an unambiguous provision.

"the preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous" *Yazoo & M V R Co v Thomas*, 132 US 174, 188; 10 S Ct 68; 33 L Ed 302 (1889); see also *Coosaw Mining Co v South Carolina*, 144 US 550, 563; 12 S Ct 689; 36 L Ed 537 (1892) ("While express provisions in the body of an act cannot be controlled or restrained by the . . . preamble, [it] may be referred to when

ascertaining the meaning of a [provision] which is susceptible of different constructions."). That is, a "preamble no doubt contributes to a general understanding of a [provision], but it is not an operative part of the [provision]," and "[w]here the enacting or operative parts of a [provision] are unambiguous, the meaning of the [provision] cannot be controlled by language in the preamble." *Nat'l Wildlife Federation v EPA*, 351 US App DC 42, 57-58; 286 F3d 554 (2002) (citations omitted); see also *United States v Emerson*, 270 F3d 203, 233 n 32 (CA 5, 2001) ("[T]hough the preamble cannot control the enacting part of a [provision], which is expressed in clear and unambiguous terms, yet, if any doubt arise on the words of the enacting part, the preamble may be resorted to, to explain it.") (citation omitted); *Planned Parenthood of Minnesota v Minnesota*, 910 F2d 479, 482-483 (CA 8, 1990); *White v Investors Mgt Corp*, 888 F2d 1036, 1042 (CA 4, 1989); *Atlantic Richfield Co v United States*, 764 F2d 837, 840 (Fed Cir, 1985); *Hughes Tool Co v Meier*, 486 F2d 593, 596 (CA 10, 1973). Similarly, see *Parker v Dist of Columbia*, 375 US App DC 140, 159-160; 478 F3d 370 (2007) (reasoning that the preamble of the Second Amendment "[a] well regulated Militia, being necessary to the security of a free State," could not override the clear substantive guarantee of the Second Amendment ["the right of the people to keep and bear Arms, shall not be infringed"]), cert gtd *sub nom Dist of Columbia v Heller*, ___ US ___; 128 S Ct 645; 169 L. Ed. 2d 417 (2007); see also *Jacobson v Massachusetts*, 197 US 11, 22; 25 S Ct 358; 49 L Ed 643 (1905) (holding that the preamble of the United States Constitution is not a source of governmental power). [*Nat'l Pride at Work, Inc v Gov of Michigan*, 481 Mich 56, 79 n 20; 748 NW2d 524 (2008).]

There is nothing ambiguous about the general rule in MCL 257.216.

Every motor vehicle, recreational vehicle, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act except the following

"Every" means "all possible." *Random Webster's College Dictionary*. "Motor vehicle" is defined as "every vehicle that is self-propelled" with some exceptions not applicable here. MCL 257.33. "Highway or street" is defined without a limitation as to Michigan: "'Highway or street' means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.20. Had the Legislature intended MCL 257.216 to pertain only to vehicles driven or moved on streets or highways in Michigan, it could easily have said so. See, for instance, MCL 257.301, which prohibits a person from driving a motor vehicle "upon a highway in this state

unless that person has a valid operator's license . . ." The Legislature did not similarly see fit to limit MCL 257.216 to highways in this state. Courts may not read into the statute a requirement that the Legislature has seen fit to omit. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743 (2013).

While the Jankowskis correctly assert that statutory provisions must not be read in a vacuum but must be read in context with the entire act, *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014), they (a) fail to actually read MCL 257.216 in context with the entire act, and (b) fail to recognize that MCL 257.216 must be read *in pari materia* with statutes relating to the same common purpose. *Apsey v Memorial Hosp*, 477 Mich 120, 129 n 4; 730 NW2d 695 (2007).

2. The statute is unambiguous when read in context with other provisions of the Motor Vehicle Code.

As previously noted, MCL 257.216 was broadly written to cover all vehicles of Michigan residents with limited, specified exceptions. One exception, MCL 257.243, exempts a *nonresident* owner from registering a vehicle in Michigan if the vehicle is properly registered in the state where the owner resides. However, even MCL 257.243 makes clear that the vehicle would otherwise be subject to registration in Michigan. The Jankowskis have failed to point to a similar exemption for a Michigan resident.

The Motor Vehicle Code's registration provisions are not limited to Michigan. This is shown by MCL 257.218, which requires registration of foreign vehicles, yet permits the owner to simultaneously retain registration in another state:

(1) If a vehicle to be registered is a . . . foreign vehicle, that fact shall be stated in the application. With reference to each foreign vehicle which has been previously registered in another state, the owner shall surrender to the secretary of state all registration plates, registration certificates, and certificates of title or other evidence of foreign registration, as are in the owner's possession or under the owner's control, except as provided in subsections (2) and (3).

(2) If the owner in the course of interstate operation^[37] of a vehicle desires to retain registration of a vehicle in another state, the owner shall not be required to surrender, but shall submit for inspection, evidence of the foreign registration and the secretary of state, upon a proper showing and upon application and payment of the registration fee, shall register the vehicle in this state.

(3) If the owner of a vehicle previously registered in another state in which the certificate of title or other proof of ownership of a vehicle is in the possession of a holder of a security interest in the vehicle, the owner of the vehicle may apply to the secretary of state for registration of the vehicle for this state after payment of all fees required by this act and submission of proof of ownership of the vehicle to the secretary of state.

3. The registration statute is unambiguous when read in *pari materia* with provisions of the no-fault act.

Had the Legislature intended MCL 257.216 to pertain only to vehicles driven or moved on streets or highways in Michigan, it could easily have said so. It did not. See *Wilson*, 195 Mich App at 709. The Jankowskis' interpretation of MCL 257.216's provision "driven or moved on a street or highway" to mean only when driven or moved on a street or highway *in Michigan*, not only inserts words in the statute not included by the Legislature, it is contrary to binding precedent in *Wilson* and would cause havoc with the entire no-fault system when MCL 257.216 is read in *pari materia* with MCL 500.3101(1). Statutes that address the same subject matter or share a common purpose are in *pari materia* and must be read collectively as one law. *Maple Grove Twp v Miseguay Creek Intercounty Drain Bd*, 298 Mich App 200, 212; 828 NW2d 459 (2012). When the Legislature uses the same phrase, the phrase should be given the same meaning. *Paige v Sterling Hts*, 476 Mich 495, 520; 720 NW2d 219 (2006) (indicating that

³⁷ "Operate" or "operating" is defined as:

- (a) Being in actual physical control of a vehicle. This subdivision applies regardless of whether or not the person is licensed under this act as an operator or chauffeur.
- (b) Causing an automated motor vehicle to move under its own power in automatic mode upon a highway or street . . . [MCL 257.35a.]

identical phrases in our statutes should have identical meanings). MCL 500.3101(1) contains the nearly identical phrase “driven or moved on a highway,” and only requires insurance to be in effect during the time the vehicle is driven or moved on a highway:

(1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. *Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway.* Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved on a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect. [Emphasis added.]

Under the Jankowskis’ definition of this phrase, an owner of a motor vehicle would never need to insure his or her vehicle outside of Michigan because the owner would only be required to provide security when the vehicle was driven on a highway in Michigan. Once the owner reached the Michigan-Ohio border, the owner could call his or her insurance agent and cancel PIP coverage on that vehicle but still collect PIP under policies insuring vehicles not involved in an out-of-state accident but involving vehicles *not* insured for PIP. If an owner of a single vehicle did not have to maintain security on his or her vehicle outside of Michigan, then how would the owner or registrant be insured when injured in an out-of-state motor vehicle accident under MCL 500.3111? Yet, this is precisely what the Jankowskis ask this Court to hold: That they need not insure their vehicles located out-of-state, but are still entitled to PIP coverage when injured in the non-Michigan-PIP-covered vehicle. The Jankowskis should not be permitted to pick and choose which Michigan statutes they wish to be governed by. If they are governed by MCL 500.3111, then they are likewise governed by MCL 500.3113(b), MCL 500.3101(1), MCL 257.216, and the remaining Michigan statutes cited herein.

4. The Jankowskis' reliance on nonauthoritative sources is likewise unavailing.

The Jankowskis' reliance on the Michigan Secretary of State website is likewise unavailing. The website merely states the unsurprising proposition that vehicles driving on Michigan roads must be registered. It does not, however, limit registration requirements to Michigan roads. The website does not, as they claim, "explicitly instruct . . . that only vehicles used in Michigan are required to be registered in Michigan."

Even if it did, an agency bulletin not adopted under the Administrative Procedures Act, MCE 24.201 *et seq.*, does not have the force of law. *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 21; 678 NW2d 619 (2004).³⁸ While the Jankowskis cite case law stating that administrative interpretations are to be given respectful consideration, they fail to provide this Court with the rest of the standard: "[A]n administrative interpretation is not conclusive and cannot be used to overcome a logical reading of the statute." *Herald Wholesale, Inc v Dep't of Treasury*, 262 Mich App 688, 693-694; 687 NW2d 172 (2004). They cite no case law stating that an administrative agency's interpretation is entitled to consideration greater than the previous, published, binding decision from the Court of Appeals in *Wilson*, 195 Mich App at 709 (which held that a Michigan resident must register and maintain Michigan PIP coverage on an owned vehicle regardless whether the vehicle has been used in Michigan). Nor do they cite this Court's most recent pronouncement on administrative interpretations, which clarifies that courts are to interpret statutes, and an administrative interpretation is not entitled to more weight than a court's interpretation:

Since the time of *Marbury v Madison*, interpreting the law has been one of the defining aspects of judicial power. "Although we may not usurp the lawmaking function of the legislature, *the proper construction of a statute is a*

³⁸ A manual or guideline also does not have the force of law. *Danse Corp v Madison Heights*, 466 Mich 175, 181; 644 NW2d 721 (2002).

judicial function, and we are required to discover the legislative intent." Administrative agencies exercise what have been described as "quasi-judicial" powers. However, such power is limited and is not an exercise of constitutional "judicial power." *The primary "judicial" function exercised by administrative agencies is confined to conducting contested cases*, like the one at issue here. These administrative contested cases resemble trials. Constitutionally and statutorily, *these administrative fact finding exercises are entitled to a degree of deference* defined by statute and our constitution. ***However, fact finding in an administrative contested case, much like in a trial before a circuit court, is a far different endeavor than construing a statute.***

* * *

The [Michigan] constitutional provision . . . does not stand for the proposition that agencies can assume this Court's constitutional role as the final arbiter of the meaning of a statute.

* * *

[T]he panel below abdicated its judicial authority to construe statutes. By acceding to the agency's interpretation, the panel gave greater consideration to the agency's interpretation than it would have given a circuit judge's construction. *Given that statutory construction is the domain of the judiciary, it is hard to imagine why a different branch's interpretation would be entitled to more weight than a lower court's interpretation.* As established in *Boyer-Campbell*, the agency's interpretation is entitled to respectful consideration and, if persuasive, should not be overruled without cogent reasons. Furthermore, the agency's interpretation can be particularly helpful for "doubtful or obscure" provisions. But, in the end, the agency's interpretation cannot conflict with the plain meaning of the statute.

"*Respectful consideration*" is not equivalent to any normative understanding of "*deference*" as the latter term is commonly used in appellate decisions. [*SBC Mich v PSC* (In re Complaint of Rovas), 482 Mich 90, 98-99, 100, 108-109; 754 NW2d 259 (2008) (emphasis added, internal citations omitted).]

Thus, even if a statement on the Secretary of State's website could be interpreted as the Jankowskis claim, it cannot trump the Court of Appeals' conclusion in *Wilson*, requiring the Jankowskis to register the vehicle in Michigan and obtain Michigan PIP coverage; without Michigan PIP coverage on the accident vehicle, the Jankowskis were precluded from obtaining Michigan PIP benefits for their Florida accident.

The Jankowskis also rely on a single sentence in a 288-page Internal Revenue Service bulletin, which is replete with cautionary notes about pending or potential revisions. The bulletin itself clarifies that it is not intended to replace the law: “However, the information given does not cover every situation and is not intended to replace the law or change its meaning.”³⁹

5. The Jankowskis’ attempt to distinguish the authority relied on by Home-Owners and Auto-Owners is unavailing.

Home-Owners and Auto-Owners rely on the analysis of *Wilson*, 195 Mich App 705, and *Guraj v Connecticut Indemnity Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2006 (Docket No. 257509). The Jankowskis attempt to distinguish *Wilson* because in *Wilson* there was no coverage and in the instant case the Jankowskis had Florida coverage on the accident vehicle, but they cite no authority that would support such a distinction. They fail to address those cases holding that inadequate coverage (i.e., coverage that fails to meet the requirements of Michigan no-fault) similarly bars a claimant from no-fault benefits under MCL 500.3113(b). See *Witt v American Family Mut Ins Co*, 219 Mich App 602, 607; 557 NW2d 163 (1996) (Michigan resident plaintiff insured his Iowa-registered vehicle with an Iowa policy), and *Bronson Methodist Hosp v Michigan Assigned Claims Facility*, 298 Mich App 192, 201; 826 NW2d 197 (2012) (owner of accident vehicle barred from PIP since lacking liability coverage because a named excluded driver). They further fail to even mention *Guraj*. The plaintiff in that case had three policies: (a) a policy through Connecticut Indemnity Insurance Company that insured the truck under a policy that provided for non-trucking liability and Michigan no-fault coverage, but excluded coverage if the vehicle was “under motor carrier direction, control or dispatch, or used to carry property in any business”; (b) a policy through Legion Insurance Company that insured the trailer that plaintiff was carrying during the accident

³⁹ Jankowskis’ Exhibit 16, 2d page.

that included a certification of Michigan no-fault coverage under MCL 500.3163; and (c) a policy through ACIA that insured his two personal vehicles for Michigan no-fault coverage. There are no distinguishing characteristics between *Guraj* and the case at hand. In both cases, the claimants had coverage on the accident vehicles. In both cases, the coverage did not provide Michigan PIP for those vehicles.

E. The Jankowskis' unpreserved constitutional arguments have no merit.

The Jankowskis' extraterritoriality constitutional argument is unpreserved, inconsistent, and self-defeating. If the Motor Vehicle Code and insurance statutes barring coverage for vehicles not insured for PIP are constitutionally barred from applying in Florida, then the Jankowskis should agree that any statutory mandate to cover a Florida accident is also constitutionally infirm. Either way, Auto-Owners would owe no PIP. Actually, the Jankowskis are wrong because application of Michigan statutes to Michigan parties for out-of-state accidents is merely an "intraterritorial impact rather than an extraterritorial impact." *Sexton v Ryder Truck Rental, Inc*, 413 Mich 406, 438-439; 320 NW2d 843 (1982).

1. This Court should not address unpreserved issues.

The Jankowskis' constitutional arguments are unpreserved. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005) ("Generally, an issue is not properly preserved if it is not raised before, and addressed and decided by, the trial court.") The purpose of the appellate preservation requirements is to prompt litigants to act in the trial court to prevent error and eliminate its prejudice, or to generate a record of the error and its prejudice. *Local Emergency Fin Assistance Loan Bd v Blackwell*, 299 Mich App 727, 737; 832 NW2d 401 (2013). This Court has repeatedly declined to consider arguments not presented at a lower level, including those relating to constitutional claims. See *In re Forfeiture of Certain Personal Property*, 441 Mich. 77, 84; 490 N.W.2d 322 (1992); *Butcher v Treasury Dep't*, 425 Mich. 262,

276; 389 N.W.2d 412 (1986); *Dagenhardt v Special Machine & Engineering, Inc.*, 418 Mich. 520; 345 N.W.2d 164 (1984); *Ohio v Dep't of Taxation v Kleitch Bros, Inc.*, 357 Mich. 504, 516; 98 N.W.2d 636 (1959).

Fountain v Filson, 336 US 681; 69 S Ct 754; 93 L Ed 971 (1949) demonstrates the error of addressing unpreserved arguments. There, the defendants raised only one ground for summary disposition. The trial court granted the motion, and the plaintiff appealed. The Court of Appeals reversed on the basis of arguments not made by either party at the trial court level, and remanded to the trial court with instructions to enter judgment for the plaintiff. In reversing the Court of Appeals decision, the United States Supreme Court aptly noted,

[T]he order was made on appeal on a new issue as to which the opposite party had no opportunity to present a defense before the trial court. In *Globe Liquor Co v San Roman*, 332 US 571 (1948), and *Cone v West Virginia Paper Co.*, 330 US 212 (1947), we held that judgment notwithstanding the verdict could not be given in the Court of Appeals in favor of a party who had lost in the trial court and who had not there moved for such relief. . . . [O]therwise the party who had won in the trial court would be deprived of any opportunity to remedy the defect which the appellate court discovered in his case. He would have had such an opportunity if a proper motion had been made by his opponent in the trial court. [*Id.* at 683 (citations omitted, emphasis added).]

The Jankowskis' vague and amorphous statements at the trial court level, claiming unspecified constitutional complications and implications, contained no specifics as to how or why these purported constitutional concerns existed, and no citation to authority. Appellate Courts have long rejected such unsupported arguments as abandoned:

It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court. . . . And, where a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned. [*Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834, 839 (1999) (internal citations omitted).]

The Jankowskis' failure to articulate the theory behind their unsupported assertion that constitutional implications would exist was fatal to preservation. Cf. *People v Danto*, 294 Mich

App 596, 605; 822 NW2d 600, 605 (2011), citing *People v Bulmer*, 256 Mich App. 33, 35; 662 NW2d 117 (2003) (“an objection on one ground is insufficient to preserve an appellate argument based on a different ground”).

These purported arguments were never addressed by the trial court; therefore, they cannot be a trial court error in need of correction. Instead, if an error exists, it was caused by the Jankowskis when not raised at the trial court level. "It is settled that error requiring reversal may only be predicated on the trial court's actions and not upon alleged error to which the aggrieved party contributed by plan or negligence." *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003).

2. The Jankowskis' reliance on *Pennoyer v Neff* has no merit.

Even if this Court considers the Jankowskis' unpreserved argument, the argument has no merit. The Jankowskis' primary authority, *Pennoyer v Neff*, 95 US 714; 24 L Ed 565 (1877), is off-point for a multitude of reasons. First, the case is in no way factually similar. Second, *Pennoyer* pertained to long-arm jurisdiction, not whether a state has the authority to direct its own citizens to comply with its laws. Third, *Pennoyer* has been overruled.

a. Factually Dissimilar

Pennoyer involved attaching property of a non-resident defendant, and service by publication, in order to assert *in personam* jurisdiction over the non-resident defendant for the payment of legal fees for services rendered. The suit had nothing to do with the property attached. The defendant lived somewhere in California but owned property in Oregon. His former attorney sued in Oregon, and obtained alternative service by publication in a local Oregon newspaper. The defendant, who of course received no actual notice, was defaulted, and the attorney was awarded the defendant's property through a sheriff's deed. The defendant brought suit to recover possession of his property. By contrast, there has been no thought of attaching the

Jankowskis' Florida or Michigan property as a way to gain personal jurisdiction; the Jankowskis are Michigan citizens, so long-arm jurisdiction is not required.

b. Long-Arm Jurisdiction

The Jankowskis only state a miniscule point of part of the United States Supreme Court's larger analysis, and not even a point that related to the Court's decision. The issue before the *Pennoyer* Court was whether a state can obtain personal jurisdiction over a non-resident through substituted service by publication merely because the non-resident owns property within its borders. The suit did not involve the property. The Court reasoned that personal jurisdiction did not apply:

1. Every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory. [*Id.* at 722 (the only point cited by the Jankowskis).]
2. Because contracts made in one state may be enforceable only in another state, and property may be held by non-residents, exercising jurisdiction that every state possesses over persons and property within its own territory will often affect persons and property without it. [*Id.* at 723.]
3. A state may subject property within its borders owned by non-residents to the payment of the demand of its own citizens as a legitimate exercise of authority. [*Id.*]
4. A party within a territory may justly be subjected to its process and bound by the judgment against him. [*Id.* at 724.]
5. If, without personal service, judgments *in personam*, obtained *ex parte* against non-residents and absent parties, upon mere publication of process, which, in the great majority of cases, would never be seen by the parties interested, could be upheld and enforced, they would be the constant instruments of fraud and oppression. [*Id.* at 726.]
6. Substituted service by publication is sufficient for proceedings *in rem*, but when the entire object of the action is to determine the personal rights and obligations of the defendants, where the suit is merely *in personam*, constructive service in this form upon a non-resident is ineffectual. [*Id.* at 727.]

7. Process from one state cannot run into another state and summon parties there domiciled to leave its territory and respond to proceedings against them. [*Id.*]
8. If a judgment is void for want of jurisdiction, it cannot be rendered valid by subsequent discovery of property within the state owned by the defendant. [*Id.* at 728.]

The Court held that a state cannot obtain personal jurisdiction *in personam* over a non-resident through substituted service by publication merely because the non-resident owned property within its borders that is unrelated to the basis of the suit. This is now largely unremarkable in the personal jurisdiction context.

Pennoyer explicitly distinguished its analysis on personal jurisdiction from a state's authority to determine the civil status of its inhabitants:

The jurisdiction which every state possesses to determine the civil *status* and capacities of all its inhabitants involve authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory. The state, for example, has absolute right to prescribe the conductions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved. [95 US at 734-735.]

Thus, *Pennoyer* is inapposite to the Jankowskis's argument. There is no question that Michigan has jurisdiction over the Jankowskis who are admitted residents of this state, and it has the authority to direct the Jankowskis to properly register their property. Even for an out-of-state accident, this is an intraterritorial impact. *Sexton, supra*, 413 Mich 406, 439.

c. Overruled

Under *Pennoyer*, “any attempt ‘directly’ to assert extraterritorial jurisdiction over persons or property would offend sister states and exceed the inherent limits of the state’s power.” In time, however, that strict territorial approach yielded to a less rigid understanding, spurred by “changes in the technology of transportation and communication, and the tremendous growth of interstate business activity. [*Daimler AG v Bauman*, 134 S Ct 746, 753; 187 L Ed 2d 624 (2014) (internal citations omitted).]

In *Shaffer v Heitner*, 433 US 186, 204; 967 S Ct 2569; 53 L Ed 2d 683 (1977), the Supreme Court recognized that *Internat'l Shoe Co v Washington*, 326 US 310 (1945), changed the standard for personal jurisdiction (“the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the states on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction”). As noted in *Shaffer*, “we know of nothing to justify the assumption that a debtor can avoid paying his obligations by removing his property to a state in which his creditor cannot obtain personal jurisdiction over him.” *Id.* at 210.

The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification. [*Id.* at 212.]

* * *

We therefore conclude that all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *Internat'l Shoe* and its progeny. [*Id.*]

3. The Jankowskis' reliance on *Sexton v Ryder Truck* is misplaced.

Sexton v Ryder Truck Rental, Inc, 413 Mich 406; 320 NW2d 843 (1982) is likewise mis-cited by the Jankowskis for a proposition this Court did not hold. The second sentence after the one quoted by the Jankowskis reflects that the proposition cited by them is no longer the law and *Sexton* actually supports Home-Owners and Auto-Owners:

The general rule of law is "that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction". . . . However, as populations and technology progressed and travel between countries and among the states increased to an everyday occurrence, exceptions to the general rule of extraterritoriality were created so that *it is now recognized that "a state may have the power to legislate concerning the rights and obligations of its citizens with regard to transactions occurring beyond its boundaries"*. [*Id.* at 434 (citations omitted).]

The *Sexton* Court was primarily concerned with whether the Michigan Motor Vehicle Code's Owner's Liability Act applied to an accident outside Michigan but involving a Michigan plaintiff and a Michigan defendant. This was framed as the law of the forum (*lex fori*) versus the law of the place of the wrong (*lex loci delicti*) for accidents in foreign states but involving Michigan citizens. This Court held the law of the forum (Michigan) applied. *Id.* at 433.

The *Sexton* rationale well supports Home-Owners' and Auto-Owners' position that the registration and insurance statutes apply: "In order to achieve the legislative purpose of the owners' liability statutes, the owners' liability statutes must be given uniform application." 413 Mich 406, 437. Likewise, to have nationwide coverage for Michigan residents under policies insuring them under MCL 500.3111, uniform application of registration and insuring statutes is required. Rates must be neither excessive nor inadequate. MCL 500.2109(1)(a); *Shavers v Atty Gen*, 407 Mich 554, 607; 267 NW2d 72 (1978). Uniformity of application promotes an adequate rate so the Jankowskis pay a Michigan rate with a per-vehicle assessment under MCL 500.3104(7)(d), and not an inadequate Florida rate when they seek Michigan PIP above the meager \$10,000 of Florida medical coverage on their involved vehicle, per Fla Stat. 627.736(1).

If the Motor Vehicle Code's owners liability provision, MCL 257.401 must be given uniform application to achieve its purpose, *Sexton, supra*, so must the registration and insurance requirements of MCL 257.216 and MCL 500.3101.

The *Sexton* Court also addressed whether Michigan's owners' liability statutes could have or had extraterritorial application. It concluded that they could because they pertained to the "intraterritorial" relationship between the owner and the operator, which was established in Michigan. *Id.* at 436-437: "However, even if we were to hold otherwise, it would be proper to give MCL 257.401 . . . and MCL 259.180 uniform application and apply them extraterritorily."

Likewise, the relationship between Home-Owners, Auto-Owners, and the Jankowskis was established by contract in Michigan and according to the Michigan no-fault act. The Jankowskis, as Michigan residents with Michigan operator licenses and seeking to recover Michigan benefits, had to comply with Michigan law on registration and insurance.

4. The Jankowskis' reliance on *American Trucking Ass'ns, Inc v Pennsylvania Secretary Dep't of Revenue* has no merit.

In *American Trucking Ass'ns, Inc v Pennsylvania Secretary Dep't of Revenue*, 483 US 266; 107 S Ct 2829; 97 L Ed 2d 226 (1987), the issue was whether state taxes applied to an interstate motor carrier ran afoul of the Commerce Clause, Art. 1 § 8, of the Federal Constitution. Interstate carriers were treated differently from intra-state carriers in imposing the taxes. The instant case does not involve interstate carriers, lump sum annual taxes imposed on operation of trucks and truck tractors, or the Commerce Clause. Therefore, *American Trucking* is inapposite to the instant case.

5. The Jankowskis' reliance on *Frick v Pennsylvania* has no merit.

Frick v Pennsylvania, 268 US 473, 486; 45 S Ct 603; 69 L Ed 1058 (1925), is cited by the Jankowskis, but it pertained to the constitutional validity of a state statute that imposed tax on the transfer, by will or intestate laws, of property located outside its borders. This case does not wholesale prohibit a state from taxing the property of its citizens, whether within its borders or without. For instance, in *New York Ex Rel Cohn v Graves*, 300 US 308, 313-314; 57 S Ct 466; 81 L Ed 666 (1937), the United States Supreme Court held that a state may require its resident to contribute to the government under which he lives by an income tax in which the income from the out-of-state property is an item of the taxpayer's gross income. This is not the type of factually developed case in which this Court should disregard preservation requirements to address an issue for which the law is clearly established. Cf. *Laurel Woods Apartments v*

Roumayah, 274 Mich App 631, 640-641; 734 NW2d 217 (2007) (“[T]his Court may overlook preservation requirements . . . if the issue involves a question of law and the facts necessary for its resolution have been presented”). Because this issue of registration as tax is completely unpreserved, having been raised for the first time on appeal, it is unknown whether Mr. Jankowski claimed deductions for his vehicle expenses for tax purposes.

The argument that registration is a tax without benefit ignores the associated benefit the Jankowskis seek of enhanced insurance recoveries. In *Greenough v Tax Assessors of Newport*, 331 US 486, 491; 67 S Ct 1400; 91 L Ed 1621 (1947), the United States Supreme Court clarified that it was unconstitutional for a state to tax property “permanently located outside the jurisdiction of the taxing state” because “no benefit or protection adequate to support a tax exaction is furnished by the state of residence.” However, a moving vehicle is not property permanently located outside the jurisdiction of the taxing state such as land or personal property of an estate at the time of death.

Nor is the benefit-protection argument valid. In *Wisconsin v JC Penney Co*, 311 US 435, 444; 61 S Ct 246; 85 L Ed 267 (1940), the Supreme Court clarified the test for whether taxation is unconstitutional in terms of protection, opportunities, and benefits:

That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return.

The Jankowskis seek to invoke the right to recover enhanced Michigan no-fault PIP benefits for an out-of-state accident; yet, this is the very state protection, opportunity, and benefit the State of Michigan has tied to registration, the obligation they now claim is an unconstitutional tax for the first time on appeal. Even if this Court considers their unpreserved collateral attack on the constitutionality of the statute, and even if this Court concludes that

registration of a vehicle constitutes a tax, such a collateral and poorly supported argument that a state statute is unconstitutional should be rejected when the nexus between the purported tax and the sought after benefit is so clearly defined.

6. The Jankowskis' reliance on *Miller Bros v State of Maryland and Allied-Signal, Inc v Director, Division of Taxation* has no merit.

Miller Bros v State of Maryland, 347 US 340; 75 S Ct 535; 98 L Ed 744 (1954), pertained to whether the State of Maryland could force a Delaware corporation to collect Maryland tax on the occasional sale of its products in Delaware to Maryland citizens. The United States Supreme Court found that the Delaware corporation, a non-resident of Maryland, had not otherwise subjected itself to the taxing power of Maryland by its acts or course of dealing. *Id.* at 344-347. However, the Court also said, “When [a state] has the taxpayer within its power or jurisdiction, it may sometimes, through him, reach his extraterritorial income or transactions.” *Id.* at 343. Thus, the Court recognized the state’s right to exercise control over its citizens. Michigan has the right to exercise that control over the Jankowskis.

Allied-Signal, Inc v Director, Division of Taxation, 504 US 768; 112 S Ct 2251; 119 L Ed 2d 533 (1992) likewise pertained to a state’s attempt to tax the income of a nondomiciliary corporation. Because the Jankowskis are domiciliaries of Michigan, this case is not on point.

F. The Jankowskis' assertion that PIP coverage is unrelated to the vehicle misses the point that the exclusion to PIP coverage in MCL 500.3113(b) (and as reflected in exclusion J of the policy) is specifically tied to the vehicle.

The Jankowskis next cite “[d]ecades of auto no-fault precedent” holding that “the right to receive no-fault PIP benefits is personal in nature, and that entitlement to PIP benefits is not per se contingent upon the person occupying a vehicle that is insured with PIP. . .” In making this argument, the Jankowskis miss the point. There are at least as many cases spanning four decades which hold that the *exclusion* from PIP benefits under MCL 500.3113(b) applies if the person’s

uninsured *vehicle* was involved in the accident. See *Belcher v Aetna Cas & Surety Co*, 409 Mich 231, 259; 293 NW2d 594 (1980) (§3113(b) is one of three circumstances where PIP is not payable because of the relationship between the person suffering bodily injury and the uninsured vehicle involved in the accident); *DeSot v Auto Club Ins Ass'n*, 174 Mich App 251, 256; 435 NW2d 442 (1988), citing *Lewis v Farmers Ins Group*, 154 Mich App 324, 327; 397 NW2d 297 (1986) (“[MCL 500.3113(b)] represents a legislative policy to deny benefits to those whose uninsured vehicles are involved in accidents”). See also *Wilson*, 195 Mich App at 707-708 (“if plaintiff was the owner or registrant of the vehicle involved in the accident, and the security required by § 3101 or 3103 was not in effect with respect to that vehicle, then she is precluded from recovery of personal protection insurance benefits”); *Witt v American Family Mut Ins Co*, 219 Mich App 602, 607; 557 NW2d 163 (1996) (“plaintiff, as a Michigan resident, was required to register his vehicle in Michigan, MCL 257.216; MSA 9.1916, and was required to maintain no-fault insurance, MCL 500.3101(1); MSA 24.13101(1). Having failed to do so, under § 3113(b) he was not entitled to no-fault benefits”); *Barnes v Farmers Ins Exch*, 308 Mich App 1, 7; 862 NW2d 681 (2014), quoting *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 39-40; 748 NW2d 574 (2008) (“[MCL 500. 3113(b)] when read in proper grammatical context, defines or modifies the preceding reference to the motor vehicle involved in the accident . . . and not the person standing in the shoes of an owner or registrant. The statutory language links the required security or insurance solely to the vehicle”).

Thus, the Jankowskis’ apparent argument that they are entitled to coverage because it is personal notwithstanding the lack of coverage on the accident vehicle does not withstand scrutiny. Their argument pertaining to exclusion J of the policy fails for the same reason.

CONCLUSION AND RELIEF REQUESTED

Because the Jankowskis have not established that (a) they were not required to register their vehicles under MCL 257.216, (b) any type of constitutional violation exists as a result of Michigan's exercise of its power over them as citizens, or (c) any valid public policy argument, they have not established that they were entitled to Michigan PIP benefits. This issue was decided more than 25 years ago in a binding, published, Court of Appeals opinion that is fully consistent with cases of this Court such as *Belcher* disallowing benefits where an owned but uninsured vehicle is involved. Leave to appeal is not warranted. Home-Owners and Auto-Owners request that this Court deny leave to appeal.

Respectfully submitted,

WILLINGHAM & COTÉ, P.C.
Attorneys for Plaintiffs/Counter-Defendants/Cross-Appellees

Dated: September 8, 2017

BY /s/ Kimberlee A. Hillock
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EXHIBIT A

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

HOME-OWNERS INSURANCE COMPANY
and AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs,

v

RICHARD JANKOWSKI and
JANET JANKOWSKI,

Defendants.

OPINION AND ORDER

CASE NO. 15-25-CK

HON. WILLIAM E. COLLETTE

At a session of said Court
held in the city of Mason, county of Ingham,
this 7/12 day of January, 2016.

PRESENT: HON. WILLIAM E. COLLETTE

This matter comes before the Court on Home-Owners Insurance Company's and Auto-Owners Insurance Company's ("Plaintiffs") motion for summary disposition pursuant to MCR 2.116(C)(10) and Richard Jankowski and Janet Jankowski's ("Defendants") motion for summary disposition pursuant to MCR 2.116(I)(2). This Court, being fully apprised of the premises, GRANTS Plaintiffs' motion as to the ownership exclusion, and GRANTS Defendants' motion as to Janet Jankowski's entitlement to underinsured motorist benefits.

FACTS

Richard and Janet Jankowski ("Defendants") are Michigan residents. At the time of the accident that is the basis of this lawsuit, Defendants owned two vehicles registered and maintained in Michigan and which were insured with Michigan PIP coverage with Home-Owners Insurance Company. Defendants also owned two vehicles which were registered and

maintained in Florida, which were insured with a Florida policy through Allstate. In January of 2014, while in Florida, the Defendants traded in a vehicle for the vehicle which would ultimately be involved in the accident. The vehicle was titled to Mr. Jankowski alone.

On May 25, 2014, the vehicle the Defendants bought in Florida was involved in a motor vehicle accident when a vehicle struck the driver's side of the car while Mr. Jankowski was turning left. Both Defendants sustained serious injuries. Defendants submitted a claim under the Florida Allstate policy as well as the Defendant's primary health insurer, and then submitted a claim to Plaintiffs for PIP benefits and underinsured motorist benefits.

STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) is proper when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." In determining whether a genuine issue of material fact exists, the Court asks "whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ." *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 175 (1994).

Plaintiff brings a cross-motion for summary disposition pursuant to MCR 2.116(I)(2), which states: "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

ANALYSIS

MCL 500.3111 provides that insurers are liable for accidental bodily injury suffered in an accident occurring outside Michigan. The statute provides that the person whose injury is the basis of the claim must be, at the time of the accident, either a named insured of a personal protection insurance policy, the spouse of a named insured, the relative of a named insured

domiciled in the same household, or the occupant of a vehicle involved in the accident whose owner or registrant was insured or who has provided security approved under the statute.

Defendants argue that on the plain meaning of the statute, they are entitled to PIP benefits because they were the named insured on a personal protection insurance policy on a vehicle other than the vehicle that was involved in the accident. Plaintiffs argue that this interpretation of MCL 500.3111 was explicitly rejected by the Michigan Court of Appeals in *Wilson v League General Ins Co*, 195 Mich App 705; 491 NW2d 643 (1992).

In *Wilson*, the plaintiff purchased an automobile in Texas while attending school there and failed to obtain any insurance for the vehicle. The plaintiff was then involved in an automobile accident in Tennessee on the way back to her mother's home in Michigan. The defendant argued that the plaintiff was not entitled to benefits under MCL 500.3113, which provides that PIP benefits need not be paid under part (b), which excludes from coverage a person that was the owner or registrant of a motor vehicle or motorcycle involved in the accident for which the security required by section 3101 or 3103 was not in effect. Plaintiff in turn argued that 3101 only applies to those vehicles which were required to be registered in Michigan, and that her vehicle was not required to be registered in Michigan at the time of the accident. The Court of Appeals clearly rejected the plaintiff's interpretation. *Wilson*, 195 Mich App at 709.

In rejecting the plaintiff interpretation, the *Wilson* court held that interpreting the requirements of MCL 500.3113(b) to only apply to those vehicles specifically registered in Michigan or driven on Michigan highways would "produce the absurd result that a person who is covered by a no-fault policy in this state could own and fail to insure several other vehicles in other states and still be permitted to recover under the one insurance policy for accidents

occurring in other states involving the vehicles for which security had not been obtained.” *Id.* The facts of this case are analogous to the facts of the *Wilson* case.

Defendants attempt to distinguish *Wilson* by arguing that “fail to insure” in that context refers to the Wilson plaintiff’s failure to insure her vehicle with any insurance provider. This Court disagrees. Therefore, in accordance with the MCL 500.3113(b) exclusion, to the extent that Defendants are “owners” under the No-Fault Act, Defendants did not have the security required by 3101 or 3103 on the motor vehicle involved in the accident and therefore, cannot collect PIP benefits for injuries arising out of that accident pursuant to MCL 500.3113(b).

Defendants also concede that Mr. Jankowski is not entitled to UIM benefits because he is a titled owner of the vehicle involved in the accident. However, Defendants argue that Mrs. Jankowski should not be excluded from UIM benefits because she was not a titled owner. The definition of “owner,” both by the policy definition and the statutory definition under MCL 500.3101(2)(k)(i), includes “a person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.” Plaintiffs argue that Mrs. Jankowski was an owner under this provision because she had her own set of keys, she did not have to ask permission to use the vehicle, and she had the right to use the vehicle for more than 30 days. However, as Defendants point out, the statutory definition of “owner” appears to be intended to address scenarios where the vehicle comes into an individual’s ownership through ways other than a traditional purchase agreement. Plaintiffs fail to provide any support for the assertion that “ownership by use” is intended to be interpreted to also capture a titled and registered owner’s spouse.

THEREFORE, IT IS ORDERED that Mr. Jankowski is excluded from coverage under the ownership exclusion under MCL 500.3113(b).

IT IS ALSO ORDERED that Mrs. Jankowski is not considered an owner for the purposes of MCL 500.3113(b) and therefore should be entitled to underinsured motorist benefits.

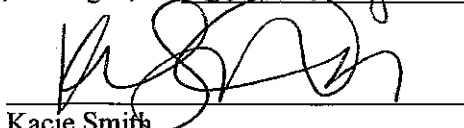
In compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claim and closes the case.



Hon. William E. Collette
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the above ORDER which each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail at Mason, Michigan, on January 4, 2016.



Kacie Smith
Law Clerk

EXHIBIT B

1	EXAMINATION INDEX		
2	WITNESSES	PAGE	
3			
4	NONE		
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15	EXHIBIT INDEX		
16	EXHIBIT	OFFERED	ADMITTED
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<p>1 Mason, Michigan</p> <p>2 December 9, 2015</p> <p>3 10:02 a.m.</p> <p>4 R E C O R D</p> <p>5 THE COURT: Okay. Homeowners versus Jankowski,</p> <p>6 15-25-CK. Gentlemen, would you identify yourselves, please?</p> <p>7 MR. YEAGER: John Yeager for Plaintiff Homeowners</p> <p>8 Insurance Company and Auto-Owners Insurance Company.</p> <p>9 MR. SINUS: Stephen Sinus for Plaintiff -- or</p> <p>10 Defendant/Counter-Plaintiff Jankowski.</p> <p>11 THE COURT: You don't know who is who anymore. Who</p> <p>12 is arguing?</p> <p>13 MR. YEAGER: It's our motion.</p> <p>14 THE COURT: I know it's a combination summary, so go</p> <p>15 ahead.</p> <p>16 MR. YEAGER: Thank you, Your Honor. This is a</p> <p>17 motion for summary disposition on a case in which we filed a</p> <p>18 declaratory judgment action to say that Homeowners Insurance</p> <p>19 Company doesn't owe no-fault PIP benefits for a Florida</p> <p>20 accident involving a vehicle that was not insured by it but</p> <p>21 owned by the Jankowskis, and also, because it was an owned but</p> <p>22 uninsured vehicle it owes no underinsured motorist benefits.</p> <p>23 Auto-Owners was also named because there was a</p> <p>24 suggestion at one point that its umbrella policy might afford</p> <p>25 underinsured motorist benefits, but there is no dispute on</p> <p style="text-align: center;">3</p>	<p>1 raising a valiant effort in that regard, but the argument is</p> <p>2 twofold. One is that you can get coverage under section 3111,</p> <p>3 which specifies out-of-state accidents if you are a named</p> <p>4 insured. And the other one, the primary case we are relying</p> <p>5 on, the Wilson versus League General case, it doesn't say</p> <p>6 this, but essentially that it's wrongly decided because the</p> <p>7 motor vehicle code shouldn't be interpreted to require people</p> <p>8 that don't have a vehicle inside Michigan to register it in</p> <p>9 Michigan and get Michigan no-fault benefits even though Wilson</p> <p>10 said that they do. And it's a published decision.</p> <p>11 So the point I think that is important is the three</p> <p>12 decisions on 3111 don't come to grips with the fact that the</p> <p>13 ones he is relying on don't deal with the disqualification</p> <p>14 under 3113(b). There is a -- there is a dispute as to the</p> <p>15 scope of 3111 because of some language in the Michigan Supreme</p> <p>16 Court case -- the court of appeals case saying you have to</p> <p>17 have coverage on the vehicle, and I believe that that was the</p> <p>18 subject of a decision you rendered on the motorcycle case,</p> <p>19 which we would distinguish on that basis in McAllister versus</p> <p>20 Farm Bureau.</p> <p>21 THE COURT: Was I right?</p> <p>22 MR. YEAGER: Pardon?</p> <p>23 THE COURT: Was I right?</p> <p>24 MR. YEAGER: Well, we'll see.</p> <p>25 THE COURT: Don't know yet. They appeal me on</p> <p style="text-align: center;">5</p>
<p>1 that part of the case or that part of the motion.</p> <p>2 THE COURT: So my umbrella policy doesn't cover me</p> <p>3 for this kind of incident out of state? Gosh, I better be</p> <p>4 careful if I was driving a car.</p> <p>5 MR. YEAGER: Actually, if you have an Auto-Owners</p> <p>6 auto policy, you can buy underinsured motorist coverage as</p> <p>7 part of your umbrella.</p> <p>8 THE COURT: I've got that.</p> <p>9 MR. YEAGER: But these people didn't, so that isn't</p> <p>10 the issue, and there is no dispute on that part of it.</p> <p>11 On the no-fault benefits part of the case, the</p> <p>12 argument really boils down to the fact that the Jankowskis buy</p> <p>13 a vehicle in Florida. While they are there for the winter I</p> <p>14 assume -- and they don't insure it under a Michigan policy.</p> <p>15 They insure it under a Florida policy. So it has no Michigan</p> <p>16 personal injury protection benefits coverage on that vehicle.</p> <p>17 It's involved in an accident. And so on the no-fault benefits</p> <p>18 the argument is simply that they are the owner but</p> <p>19 disqualified under section 3113(b) as the owner of a vehicle</p> <p>20 with respect to which the no-fault coverage of Michigan</p> <p>21 doesn't apply.</p> <p>22 Now, we have three cases that say that for an</p> <p>23 out-of-state accident you are disqualified if you are the</p> <p>24 owner and you don't have Michigan PIP on the vehicle. The</p> <p>25 response is a novel one and I commend my opposing counsel for</p> <p style="text-align: center;">4</p>	<p>1 everything.</p> <p>2 MR. YEAGER: There is more reason to say that you</p> <p>3 were right with respect to a motorcycle which doesn't require</p> <p>4 Michigan PIP on it if it's in Michigan than with respect to a</p> <p>5 four wheel motor vehicle that does have to have Michigan PIP</p> <p>6 on it. Whether it's in Michigan or under the Wilson case,</p> <p>7 even if you are a Michigan resident, what Wilson said is you</p> <p>8 don't get a pass on having to get your car insured in Michigan</p> <p>9 and registered in Michigan.</p> <p>10 The point that I -- as I distill it down, what I</p> <p>11 think is wrong with my brother counsel's argument is that</p> <p>12 there isn't an exception in 3113 for 3111. I think you make</p> <p>13 an argument that 3111 trumps 3113(b), but the problem is that</p> <p>14 3113(b) is seen as being a disqualification. It's an</p> <p>15 exclusion and it doesn't say, except as provided in section</p> <p>16 3111, because if it did that, then I think there would be a</p> <p>17 better argument for saying there should be coverage. But we</p> <p>18 have the Wilson case that says specifically the motor vehicle</p> <p>19 code requires you to register it, and so you lose on Michigan</p> <p>20 benefits.</p> <p>21 Wilson came up in the context of someone who was a</p> <p>22 student attending college out of state but still a Michigan</p> <p>23 resident and buys a car, I believe, in Texas and doesn't have</p> <p>24 it insured and is driving back and is involved in an accident,</p> <p>25 so the car has never been in Michigan. The court of appeals</p> <p style="text-align: center;">6</p>

1 said, you lose on Michigan PIP. You can't collect on your
2 parent's policy because you are the owner and it was
3 uninsured.

4 The novel argument that's made under the motor
5 vehicle code, I think, is that, first of all, start out with
6 the general language at the start of the motor vehicle code
7 that says that it pertains to -- this act pertains to titling,
8 sale, transfer and registration of certain motor vehicle
9 operated upon the public highways of this state. And I
10 believe that opposing counsel is saying so the scope of it
11 should be limited to just vehicles in the state. But the
12 remaining language in that introductory clause says, or any
13 other place open to the general public. And when you go to
14 the specific provision, which is MCL 257.216, it says, every
15 motor vehicle, et cetera, when driven or moved upon a street
16 or highway is subject to the registration provision. And
17 that's the language that was relied on by the court of appeals
18 in Wilson.

19 Now, there is an exception in Sub A, but it only
20 pertains to nonresidents. So only nonresidents get off of
21 having to register vehicles, even if they acquire them out of
22 state and insure them.

23 So I think the motor vehicle code argument is
24 incorrect for three reasons. One is we have a binding
25 precedent that says to the contrary. You got to register.

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1 You got to get insurance.

2 Secondly, the introductory language goes beyond just
3 saying, referring to this state and says or any other place
4 open to the general public. So there isn't a title object
5 issue here on that.

6 And the third is that when you go to the specific
7 provision within the motor vehicle code it only gives an
8 exception to nonresidents.

9 So I think that with respect to the no-fault
10 benefits claim, the exclusion applies, 3113(b), and that's the
11 premise of our motion. We are not going under 3111, which has
12 the issues that were in the McAllister case and both -- I
13 should say all three of these cases that are relied on,
14 McAllister, Roland and Williams, the Court isn't deciding a
15 3113(b) disqualification issue.

16 THE COURT: All right.

17 MR. YEAGER: The other part of this is that owner by
18 use. Mrs. Jankowski, according to her husband, has the full
19 use of the vehicle. She is -- I think the testimony was to
20 the effect that she has her own keys. She has -- she doesn't
21 have to ask permission to use it. She has used it between
22 January and May. And the clincher question to Mr. Jankowski
23 was, so regardless of who is on the title of the vehicles that
24 you own, it sounds like to me that whatever is yours is hers,
25 is that correct? That's correct. So that she is an owner by

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1 use. The case law is clear that an owner by use is also
2 disqualified from receiving PIP.

3 Then, with regard to the underinsured motorist, the
4 argument that's made is to say, well, that should be limited
5 to just him as the title owner, so she should still get
6 underinsured motorist, but again, this disregards the
7 deposition testimony and the owner by use concept that -- and
8 the testimony of Mr. Jankowski that it was hers as well as
9 his.

10 Finally, I guess to clinch this, Your Honor, I think
11 that the Wilson case said it would be an absurd result if you
12 let people in Michigan get cars in another state, not insure
13 them with Michigan PIP, and then come to the Michigan system
14 to recover no-fault benefits. And I submit that for all the
15 reasons in our briefs the motion should be granted. The Court
16 should declare that the Jankowskis are not entitled to
17 Michigan PIP benefits and are not entitled to underinsured
18 motorist benefits because this is a vehicle that was owned but
19 not insured under the policy issued by Homeowners.

20 THE COURT: Thank you. Mr. Sinas?

21 MR. SINAS: Your Honor, I want to apologize. We are
22 here this morning on such an interesting statutory language
23 interpretation issue, but that's exactly what this motion
24 calls for, a very detailed look at all the statutes at play
25 here. So I want to start off by explaining that we asked for

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1 cross relief based on 3111. We were facing their motion for
2 disqualification from no-fault benefits, and our argument on
3 cross relief is that they are not disqualified. In fact, they
4 are entitled as a matter of law, and 3111 is the basis for
5 that argument.

6 And as you ruled in McAllister, there are two
7 different requirements that can be met for an out-of-state
8 accident for someone to be entitled to no-fault benefits. One
9 is simply that the person is a named insured under a no-fault
10 policy and the status of what vehicle they are occupying
11 doesn't matter. If they are a named insured and they are in
12 an accident in the United States, Canada or its territories,
13 they get no-fault benefits, and that was the essence of your
14 ruling in McAllister.

15 The other way a person gets no-fault benefits in an
16 out-of-state accident is if they are occupying a vehicle that
17 was actually insured with no-fault. That's the provision that
18 kicks in when the family member who is with the Michigan
19 resident down in Florida, the family member is not a Michigan
20 resident, but they are with a Michigan resident driving in a
21 no-fault vehicle, if they are in an accident down there that's
22 the provision that kicks in to give the family member
23 entitlement to no no-fault because they are issued a no-fault
24 insured vehicle.

25 So we believe the cases, if you look closely at

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1 them, all recognize that a named insured under a no-fault
2 policy in an accident anywhere in America is going to get
3 no-fault, and that's the basis of our cross relief. So with
4 that being understood, that's why we T'd up 3111.

5 Now, I do acknowledge that in order to complete the
6 entitlement analysis, you have to ask yourself, well, if the
7 person passes under 3105 sustaining a bodily injury arising
8 out of a motor vehicle accident, if they pass 3111 are they
9 disqualified under 3113(b)? And that's the issue that you are
10 ultimately faced with here today, and it requires a detailed
11 examination of the statutory language.

12 It begins with – with identifying that the
13 disqualifying provision in 3113(b) only disqualifies the
14 owners or registrant of a motor vehicle or motorcycle involved
15 in the accident with respect to which the security required by
16 section 3101 or 3103 was not in effect. 3101. That's what
17 you have to turn to, to determine whether the vehicle was not
18 properly insured. It says that the owner or registrant of a
19 motor vehicle required to be registered in this state shall
20 maintain security for payment of benefits under personal
21 protection insurance, property protection insurance and
22 residual liability insurance.

23 So the question becomes in order to disqualify the
24 Jankowskis under 3113(b), did they fail to get the insurance
25 on this vehicle that was required under 3101? And 3101 says

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1 you only have to insure the vehicles that they are required
2 and registered in this state, which gets us to the motor
3 vehicle code. And what they are asking you to rule, Your
4 Honor, is that the motor vehicle code has jurisdiction over
5 any vehicle in America that's owned by a Michigan resident.
6 That's a pretty dicey proposition. That has all kinds of
7 constitutional implications to it. It exceeds the
8 jurisdiction of the State of Michigan to say that the
9 Jankowskis, when they are down in Florida under the
10 jurisdiction of Florida laws, abiding by those laws -- and by
11 the way, for the record, they did abide by Florida statute
12 320.02, which requires their vehicle to be registered in the
13 state of Florida. They did that. They insured it, and now
14 Auto-Owners is trying to ask Judge Collette to rule that the
15 motor vehicle code actually governed that vehicle up here in
16 Michigan, and that the Jankowskis were violating the motor
17 vehicle code by not registering that Florida vehicle up here
18 in Michigan, which brings me to another point about the motor
19 vehicle code.

20 That under 257.215, it is a misdemeanor for any
21 person to drive or move or an owner knowingly to permit to be
22 driven or moved upon any highway any vehicle of a type
23 required to be registered herein. So their logic is the other
24 statute that doesn't specifically say, which is for the
25 record, 257.216, that every motor vehicle moved on a

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1 highway -- a street or highway in the State of Michigan,
2 doesn't say in the State of Michigan. Their argument is
3 because it doesn't say in the State of Michigan, every vehicle
4 driven by a Michigan resident in America has to be registered
5 in Michigan.

6 I've already addressed the common sense insanity of
7 that argument, and now I want to point out back to the
8 257.215, if you ruled that way you would be ruling that the
9 Jankowskis were committing a misdemeanor by not registering
10 their Florida vehicle up here in Michigan. That's how insane
11 their argument is, and it's based upon the Wilson case. And
12 the Wilson case clearly was addressing an issue where the
13 injured person failed to insure their vehicle completely. And
14 they want to say that the concern was the Court was saying
15 that the No-Fault Act shouldn't govern vehicles owned by
16 Michigan residents out of state. That is not the case, Your
17 Honor.

18 In Wilson, what the Court ended up saying about its
19 underlying policy driven analysis, and I quote here from the
20 opinion for the record, it says, to so interpret the language
21 requiring the registration language we have been talking
22 about, so to interpret the language would produce the absurd
23 result that a person who is covered by a no-fault policy in
24 this state could own and fail to insure several other vehicles
25 in other states and still be permitted to recover under one

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1 insurance policy for accidents occurring in the states
2 involving the vehicles for which security -- it doesn't say
3 security required by 3101 -- for which security has not been
4 obtained.

5 So what you get from the Court is that they were
6 very much concerned about giving the injured person no-fault
7 benefits for a vehicle that they just didn't insure at all.

8 The Jankowskis followed the law to a T. They
9 followed the law of Florida, which governed the jurisdiction
10 of that vehicle, and when it comes down to it, the Wilson case
11 is distinguishable completely on those grounds.

12 And the other thing I point out about with the
13 Wilson case, because they want to say they have this court of
14 appeals case that you must follow. It's obvious in the Wilson
15 case that the arguments were limited. The arguments did not
16 include the arguments we are making to you today about the
17 jurisdictional, constitutional issues of applying the motor
18 vehicle code down in Florida. That argument is totally not in
19 the opinion. All it does, is it says that the person cited
20 257.216, and as I said before, that part of the motor vehicle
21 code doesn't say street or highway in this state, and that's
22 the only issue they are addressing.

23 They weren't addressing the preamble of the motor
24 vehicle code. They weren't addressing the misdemeanor
25 argument I am giving you today. They weren't addressing the

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1 constitutional power argument I have given you today all to
 2 lead to the common sense conclusion that, of course, the
 3 Michigan Motor Vehicle Code does not have governance over
 4 Florida vehicles that are purchased in Florida and used only
 5 in Florida.
 6 So Your Honor, when it comes down to it, the other
 7 thing I wanted to also make -- put on the record here is that
 8 in our brief we did not cite the case of Covington versus
 9 Interstate System, court of appeals case, 88 Mich App 492,
 10 decided in 1979. And it says, according to the express
 11 language of the statute, which would be 3113 -- I'm sorry,
 12 3101. According to the express language of the statute, only
 13 those vehicles required to be registered in this state are
 14 subject to the requirements of the Michigan No-Fault Act. The
 15 court of appeals said that in 1979.
 16 THE COURT: Sure.
 17 MR. SINAS: You know, I guess I kind of rest my
 18 case, because they cite this tortured reasoning from Wilson
 19 about an uninsured driver to tell you that you should say that
 20 the Jankowskis just committed a misdemeanor down in Florida.
 21 THE COURT: I think you are being a little maybe
 22 just a little bit theatrical.
 23 MR. SINAS: Well, my point is that the tortured
 24 reasoning leads to those kind of absurd results.
 25 THE COURT: Tortured arguments lead to those results

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1 too, sir.
 2 MR. SINAS: I am going --
 3 THE COURT: I am just pointing out.
 4 MR. SINAS: I am going to make one quick point about
 5 the underinsured. Richard Jankowskis is clearly the owner of
 6 the vehicle under the plain language of the policy. If the
 7 owner of a vehicle -- or I'm sorry, if the person owns a
 8 vehicle that's not insured under the policies, he is excluded
 9 from underinsured coverage under that policy. That vehicle
 10 wasn't insured under the Auto-Owners policy. Therefore, he is
 11 excluded. However, the definition of owner under the plain
 12 language of the policy does not cite use -- does not cite
 13 permissive use as being a triggering standard. It cites
 14 registrant and legal title owner, which only Richard Jankowski
 15 was and not Janet, so her claim under that policy should not
 16 be barred.
 17 THE COURT: I am intrigued by that argument that you
 18 say that because she has free access to use the vehicle that
 19 somehow that creates her being an owner of the vehicle. I
 20 have never had that raised here before, Mr. Yeager. Are these
 21 new things they are coming up with to avoid liability or are
 22 these things that have been around for a time? I don't
 23 remember any of this. I thought that because my car is in my
 24 name and my wife's car is in her name that if she is in a
 25 wreck they sue her because she is the owner, and if I am in a

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1 wreck with my car they sue me. I get to drive her car on
 2 occasion, but I am troubled by the fact that I would suddenly
 3 now be liable to be sued and my insurance company, as you are
 4 well aware, would be very shocked by that argument that I am
 5 liable for her damages. How would that be?
 6 MR. YEAGER: Well, there is two -- two different
 7 provisions you have to deal with.
 8 THE COURT: What's the policy say? The policy --
 9 MR. YEAGER: The policy track, at least for the part
 10 that's being invoked here, tracks -- I believe it's section
 11 3102 of the no-fault -- or 3101(2) of the No-Fault Act
 12 defining an owner as a person driving a motor vehicle or
 13 having the use of a motor vehicle under lease or otherwise for
 14 a period that is greater than 30 days.
 15 THE COURT: Well, hell, that covers all of us then.
 16 So any time two people own cars in a family, are you saying
 17 that they are both -- they are both covered under this?
 18 MR. YEAGER: For no-fault they can be owners by use
 19 if they have the right to use the vehicle for more than 30
 20 days.
 21 Now, for liability, in the motor vehicle code
 22 definition of an owner it's slightly different because there
 23 they use the word exclusive, having exclusive use for 30 days.
 24 So that there is a difference there that I think would affect
 25 the outcome in your concern that you now have new found

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1 liability for your wife's driving your car or you driving her
 2 car.
 3 THE COURT: So if I use her car for 30 days I
 4 automatically become an owner to get sued? I'm stunned.
 5 MR. YEAGER: All I'll tell you is that the
 6 liability, I think, is affected by the separate motor vehicle
 7 code section defining -- requiring exclusive use, but it --
 8 THE COURT: It seemed like your client could put
 9 better language in their contract, then, that says, look, if
 10 you drive your husband's car you are not covered. If you
 11 drive your wife's car or your kid's car you are not covered,
 12 instead of all of this esoteric, well, isn't it true that you
 13 are sometimes driving this car for more than a minute?
 14 MR. YEAGER: It's going the other way, Judge.
 15 Actually, you do get coverage as a permissive user when you
 16 drive your wife's car. You are covered under that because the
 17 owner's policy is always going to be primary. The driver's
 18 policy is extra. The liability coverage is really off point
 19 for underinsured motorists.
 20 THE COURT: The reason this lady can't collect is
 21 because she drives her husband's car.
 22 MR. YEAGER: And he says that it's hers in his
 23 deposition. Whatever is mine is hers.
 24 THE COURT: Okay. All right. If he died, of
 25 course, she'd have to go through some probate proceedings to

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<p>1 have the car put in her name. It wouldn't be hers. They</p> <p>2 wouldn't accept any of this definition.</p> <p>3 MR. YEAGER: That's probably true, but in the</p> <p>4 no-fault and in the owners liability and things, the</p> <p>5 legislature, in its great wisdom, has created an ownership</p> <p>6 category that I term ownership by use, and we know that it</p> <p>7 disqualifies for PIP, and we know that there is similar</p> <p>8 provision here in the policy, and we are back to the point of,</p> <p>9 okay, they have a vehicle that is titled in the husband's name</p> <p>10 but the wife has free use to use, and they want to collect</p> <p>11 underinsured motorist benefits under a policy that there is no</p> <p>12 coverage for that vehicle.</p> <p>13 THE COURT: All right. I'll look at that. But</p> <p>14 Mr. Sinas, couldn't these people have simply bought a policy</p> <p>15 through Auto-Owners?</p> <p>16 MR. SINAS: They tried, Your Honor. The deposition</p> <p>17 testimony is very clear. They tried. They called their</p> <p>18 agent.</p> <p>19 THE COURT: And what did the agent say?</p> <p>20 MR. SINAS: The agent said, go insure and register</p> <p>21 it down in Florida.</p> <p>22 THE COURT: But that was a decision --</p> <p>23 MR. SINAS: It was a decision made upon --</p> <p>24 THE COURT: Weren't they eligible to buy insurance</p> <p>25 here because they were owners?</p> <p style="text-align: center;">19</p>	<p>1 THE COURT: Oh, Mr. Yeager, you got a minute.</p> <p>2 MR. YEAGER: One minute. I'll try to use it wisely</p> <p>3 then.</p> <p>4 Wilson I think is squarely on point. Covington is</p> <p>5 decided before 1990, and it's effectively overruled by Wilson.</p> <p>6 Wilson squarely says you have to register and you don't get a</p> <p>7 pass on doing it, so you don't collect no-fault benefits if</p> <p>8 you don't have coverage even if you are driving a car out of</p> <p>9 state.</p> <p>10 THE COURT: Wait a minute. Is that it? Is that the</p> <p>11 standard our Supreme Court is using now? If your case is</p> <p>12 older than 1990 it's no good?</p> <p>13 MR. YEAGER: Yeah.</p> <p>14 THE COURT: Is that the new standard?</p> <p>15 MR. YEAGER: If you have a published court of</p> <p>16 appeals decision rendered after November 1990 --</p> <p>17 THE COURT: Yes.</p> <p>18 MR. YEAGER: -- it becomes a binding precedent on</p> <p>19 the court of appeals and lower courts.</p> <p>20 THE COURT: Well, our Supreme Court doesn't seem to</p> <p>21 recognize any binding precedent as far as I can tell.</p> <p>22 MR. YEAGER: And they have the luxury of sitting in</p> <p>23 the position where they can do that. But us mere mortals --</p> <p>24 THE COURT: I am being flip, John. That's all.</p> <p>25 Listen. I understand, guys. We are going to write something</p> <p style="text-align: center;">21</p>
<p>1 MR. SINAS: No. They were refused.</p> <p>2 THE COURT: By the company?</p> <p>3 MR. SINAS: Yes.</p> <p>4 MR. YEAGER: Well, I don't know that Auto-Owners</p> <p>5 submitted it. I think the problem was the agent said, I am</p> <p>6 not an agent in Florida. If they had gone to an Auto-Owners</p> <p>7 agent in Florida there would probably be a different question</p> <p>8 to be asked.</p> <p>9 THE COURT: They would have been covered, sure.</p> <p>10 MR. YEAGER: Pardon?</p> <p>11 THE COURT: They would have been covered. The agent</p> <p>12 would have issued a policy conforming, I am assuming, with --</p> <p>13 MR. SINAS: They had a policy down in Florida on the</p> <p>14 car.</p> <p>15 THE COURT: I know that.</p> <p>16 MR. YEAGER: They bought an Allstate policy.</p> <p>17 THE COURT: Well, there you go.</p> <p>18 MR. YEAGER: But I mean, you come back to the policy</p> <p>19 doesn't insure this vehicle.</p> <p>20 THE COURT: I know.</p> <p>21 MR. YEAGER: And I guess they could have appealed</p> <p>22 through the provisions if they thought they should be able to</p> <p>23 get a Michigan policy. They don't have a Michigan policy.</p> <p>24 THE COURT: All right.</p> <p>25 MR. YEAGER: I want to respond to just one point.</p> <p style="text-align: center;">20</p>	<p>1 and it'll come out, and then one of you can ask for</p> <p>2 reconsideration and then appeal and all of that stuff, all</p> <p>3 right? Thanks, guys.</p> <p>4 MR. SINAS: Thanks.</p> <p>5 MR. YEAGER: Thank you, Judge.</p> <p>6 (Whereupon, Motion concluded at 10:28 a.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">22</p>

1 STATE OF MICHIGAN)
2)SS
3 COUNTY OF INGHAM)

4 I, Paul G. Brandell, Certified Shorthand Reporter, do
5 hereby certify that the foregoing Motion for Summary
6 Disposition was taken before me at the time and place
7 hereinbefore set forth.

8 I further certify that the foregoing is a full,
9 true, and correct transcript of the statements taken on
10 December 9, 2015.


11 
12 2-9-16 Paul G. Brandell, CSR-4552
13 Certified Shorthand Reporter,
14 Registered Professional Reporter
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EXHIBIT C

**STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY**

**HOME-OWNERS INSURANCE
COMPANY and AUTO-OWNERS
INSURANCE COMPANY,**

Plaintiffs,

v

**RICHARD JANKOWSKI and
JANET JANKOWSKI,**

Defendants.

OPINION & ORDER

CASE NO. 15-25-CK

HON. WILLIAM E. COLLETTE

At a session of said Court
held in the city of Mason, county of Ingham,
this 29th day of January, 2016.

PRESENT: HON. WILLIAM E. COLLETTE

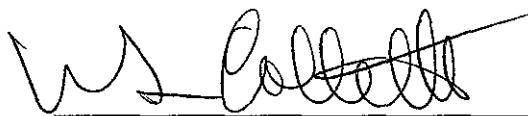
This matter comes before the Court on Plaintiffs' motion for reconsideration of this Court's January 4, 2016 order partial denial of Plaintiff's motion for summary disposition to the extent that this Court found Janet Jankowski was not an owner of the vehicle in question under the Michigan No-Fault Act. This Court, being fully advised of the premises, DENIES Plaintiffs' motion.

A motion for reconsideration requires the moving party to demonstrate a palpable error by which the court and the parties have been misled and that a different disposition of the motion must result from correction of the error. A motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). Defendant

makes the same arguments that were made in oral argument before this Court on August 26, 2015, regarding the applicability of the exception to MCR 2.603(D)(1).

Plaintiff cites unpublished cases from the Court of Appeals in support of their position that an individual's spouse can be considered an owner of a vehicle even though it is not titled, registered, or insured in their name. This Court declines to follow unpublished case law where there is nothing from published case law to support the assertion that a spouse is made an owner of a vehicle for the purposes of PIP benefits simply due to the usual sharing nature of a spousal relationship.

THEREFORE IT IS ORDERED that Plaintiffs' Motion for Reconsideration is **DENIED**.

A handwritten signature in black ink, appearing to read 'W. E. Collette', written over a horizontal line.

Hon. William E. Collette
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the above ORDER which each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail at Mason, Michigan, on January 28 2016.



Kacie Smith
Law Clerk

EXHIBIT D

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

HOME-OWNERS INSURANCE
COMPANY and AUTO-OWNERS
INSURANCE COMPANY,

Plaintiffs,

v

RICHARD JANKOWSKI and
JANET JANKOWSKI,

Defendants.

OPINION & ORDER

CASE NO. 15-25-CK

HON. WILLIAM E. COLLETTE

At a session of said Court
held in the city of Mason, county of Ingham,
this 15th day of February, 2016.

PRESENT: HON. WILLIAM E. COLLETTE

This matter comes before the Court on Defendant's partial motion for reconsideration of this Court's January 4, 2016 order where the Court held the Jankowski's were disqualified from receiving no-fault PIP benefits under MCL 500.3113(b). This Court, being fully apprised of the premises, DENIES Defendant's motion.

A motion for reconsideration requires the moving party to demonstrate a palpable error by which the court and the parties have been misled and that a different disposition of the motion must result from correction of the error. A motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3).

Defendants argue that under MCL 257.218(3), because the vehicle in question was a foreign vehicle registered in another state, registration in Michigan is optional.

Subsection (3) provides:

(3) If the owner of a vehicle previously registered in another state in which the certificate of title or other proof of ownership of a vehicle is in the possession of a holder of a security interest in the vehicle, the owner of the vehicle may apply to the secretary of state for registration of the vehicle for [Michigan] after payment of all fees required by this act and submission of proof of ownership of the vehicle to the secretary of state.

Defendants argue that the word "may" makes registration in Michigan optional, and therefore the vehicle in this case was not "required to be registered" for the purposes of MCL 500.3101(1), which requires vehicles that are "required to be registered" in Michigan also carry personal protection insurance and under which this Court has previously held the Defendants were disqualified as owners under MCL 500.3113(b). This Court declines to follow Defendants' proposed conclusion that because foreign vehicle registration is optional in Michigan, Defendants should not be required to carry Michigan personal protection insurance on vehicles they own in order to collect Michigan personal protection benefits on accidents involving those vehicles. Michigan insurance policies should not be exposed to this kind of unlimited liability for personal protection benefits where the clear reading of MCL 500.3113(b) states the obvious and logical intention that those owners who do not carry personal protection insurance on vehicles involved in an accident may not collect personal protection insurance benefits for those accidents.

THEREFORE IT IS ORDERED that Defendants' Motion for Partial Reconsideration is **DENIED**.



Hon. William E. Collette
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the above ORDER which each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail at Mason, Michigan, on March 1, 2016.



Kacie Smith
Law Clerk

EXHIBIT E

**STATE OF MICHIGAN
COURT OF APPEALS**

HOME-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant/Cross Appellee,

and

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff,

v

RICHARD JANKOWSKI, and JANET
JANKOWSKI,

Defendants-Appellees/Cross
Appellants.

UNPUBLISHED
May 11, 2017

No. 331934
Ingham Circuit Court
LC No. 15-000025-CK

Before: GADOLA, P.J., and JANSEN and SAAD, JJ.

PER CURIAM.

Plaintiff Home-Owners Insurance Company (Home-Owners) appeals the trial court's order that partially granted its motion for summary disposition under MCR 2.116(C)(10). Defendants cross-appeal the same order. We affirm in part, reverse in part, and remand for entry of an order consistent with this opinion.

I. BASIC FACTS

This personal protection (PIP) insurance case arises out of an automobile accident in Florida. Defendants are residents of Michigan and live in Florida during the colder months. While in Florida in January 2014, defendants traded in one of their vehicles and leased a new Lexus GX460. The GX460 was registered in Florida and insured through a Florida policy. On May 25, 2014, while in Florida, defendants drove their GX460 home from dinner and were struck by a vehicle that went through a red light. Both defendants sustained serious injuries.

Defendants own two other vehicles in Michigan, both of which were insured by Home-Owners. Defendants also purchased a liability insurance policy through Auto-Owners. Defendants sought PIP benefits from Home-Owners and underinsured motorist benefits (UIM) from Auto-Owners.¹

The trial court found that Mr. Jankowski could not recover PIP benefits because he was an owner of the vehicle and was precluded from coverage because the vehicle did not carry Michigan PIP insurance. The trial court determined that Mrs. Jankowski was not precluded from PIP benefits because she was not an owner or an “owner by use.”

II. ANALYSIS

On appeal, Home-Owners argues that Mrs. Jankowski was an “owner by use” and was therefore precluded from PIP benefits because an owner must carry Michigan PIP insurance on the vehicle involved in the accident. We agree.

This Court “reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The Court in *Maiden* explained:

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id.*]

“[A]ll reasonable inferences are resolved in the nonmoving party’s favor.” *Hampton v Waste Mgmt of Mich, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999). This Court also reviews de novo “the interpretation and application of a statute as a question of law.” *Boyle v Gen Motors Corp*, 468 Mich 226, 229; 661 NW2d 557 (2003).

Under MCL 500.3111,

[p]ersonal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection

¹ It appears that the parties agreed at the trial court that the policy purchased by defendants through Auto-Owners did not provide underinsured motorist benefits (UIM).

insurance policy or has provided security approved by the secretary of state under subsection (4) of section 3101.

However, a person is excluded from receiving PIP benefits if, at the time of the accident, that person “was the *owner* or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 . . . was not in effect.” MCL 500.3113(b) (emphasis added).

MCL 500.3101(2)(k)(i) defines “owner” as “[a] person renting a motor vehicle or *having the use* of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.” Importantly, there may be “multiple owners of a motor vehicle.” *Ardt v Titan Ins Co*, 233 Mich App 685, 691; 593 NW2d 215, 218 (1999). In *Ardt*, the Court held that “‘having the use’ of a motor vehicle for purposes of defining ‘owner,’ means using the vehicle in ways that comport with concepts of ownership.” *Id.* at 690 (citation omitted). The *Ardt* Court continued:

The provision does not equate ownership with any and all uses for thirty days, but rather equates ownership with “having the use” of a vehicle for that period. Further, we observe that the phrase “having the use thereof” appears in tandem with references to renting or leasing. These indications imply that ownership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another. [*Id.* at 690-691.]

“[I]t is not necessary that a person actually have used the vehicle for a thirty-day period before a finding may be made that the person is the owner. Rather, the focus must be on the nature of the person’s right to use the vehicle.” *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530; 676 NW2d 616 (2004).

Here, the undisputed testimony of defendants was that Mrs. Jankowski was allowed to drive the GX460 for the entire time period between January and May. Mrs. Jankowski stated that she had her own set of keys and that she did not need to ask permission to use the vehicle. Mr. Jankowski also acknowledged that Mrs. Jankowski did not need to ask permission to use the GX460. These facts establish that Mrs. Jankowski’s rights to the GX460 were consistent with that of an owner and that she had this right for a period of longer than 30 days. Therefore, we hold that Mrs. Jankowski was an “owner” of the vehicle under MCL 500.3113(b), and the trial court erred when it ruled otherwise. As such, Mrs. Jankowski is barred from recovering any PIP benefits because the GX460 lacked the necessary security. MCL 500.3113(b).

On cross-appeal, defendants argue that, because the vehicle involved in the accident was never driven in Michigan, it was not required to be registered in Michigan, and thus was not required to carry the security required in MCL 500.3101(1). Defendants claim that the Motor Vehicle Code, MCL 257.1 *et seq.*, shows that only those vehicles that are to be driven in Michigan are required to have security under the no-fault act.

Defendants' reliance on MCL 257.216 and the preamble to the Motor Vehicle Code is misplaced.² As already explained, the plain language of the no-fault act precludes a vehicle's owner from collecting PIP benefits if the vehicle was not covered under a Michigan no-fault policy. MCL 500.3113(b). Accordingly, if a party "was the owner or registrant of the vehicle involved in [an] accident, and the security required" by MCL 500.3101 "was not in effect with respect to that vehicle, then [he or she] is precluded from recovery" of PIP benefits. *Wilson v League Gen Ins Co*, 195 Mich App 705, 707-708; 491 NW2d 642 (1992). Construing MCL 500.3113(b) and MCL 500.3101(1), the Court in *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 39; 748 NW2d 574 (2008) stated, "The statutory language links the required security or insurance solely to the vehicle."

The *Wilson* Court expressly rejected defendants' view and explained:

[MCL 257.216] does not specifically limit the requirements of § 3113(b) of the no-fault act only to cars driven on Michigan highways. Because the language of § 3113(b) is unambiguous, we will not read additional provisions into the language. Further, to so interpret the language would produce the absurd result that a person who is covered by a no-fault policy in this state could own and fail to insure several other vehicles in other states and still be permitted to recover under the one insurance policy for accidents occurring in the other states involving the vehicles for which security had not been obtained. [*Wilson*, 195 Mich App at 709.]

Defendants also raise other arguments that are not preserved for appeal. This Court "need not address an unpreserved issue." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 387; 803 NW2d 698 (2010). However, we may "overlook preservation requirements when the failure to consider an issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Id.* Defendants' unpreserved arguments lack merit, so we are not convinced that defendants can circumvent the prohibition against recovering PIP benefits in MCL 500.3113(b). Accordingly, we decline to address the arguments.

² MCL 257.216 states that "[e]very motor vehicle, recreational vehicle, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act" And the preamble to the Michigan Vehicle Code states, "AN ACT to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles" 300 PA 1949.

Affirmed in part, reversed in part, and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction. Home-Owners, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael F. Gadola
/s/ Kathleen Jansen
/s/ Henry William Saad

Exhibit F

Court of Appeals, State of Michigan

ORDER

Home-Owners Insurance Company v Richard Jankowski

Docket No. 331934

LC No. 15-000025-CK

Michael F. Gadola
Presiding Judge

Kathleen Jansen

Henry William Saad
Judges

The Court orders that the motion for reconsideration is DENIED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 22 2017

Date

Chief Clerk

Exhibit G

HOME-OWNERS INS. CO., ET AL v.
JANKOWSKI

RICHARD JANKOWSKI

July 29, 2015

Prepared by

Network*Reporting* 
— STATEWIDE COURT REPORTERS —

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Fax: 800.968.8653
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Let us assist you GLOBALLY for all of your deposition needs.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

HOME-OWNERS INSURANCE COMPANY, and
AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs,

v

File No. 15-0025-CK

HON. WILLIAM E. COLLETTE

RICHARD JANKOWSKI and
JANET JANKOWSKI,

Defendants.

DEPOSITION OF RICHARD JANKOWSKI

Taken by the Plaintiff on the 29th day of July, 2015, at
3380 Pinetree Road, Lansing, Michigan, at 10:00 a.m.

APPEARANCES:

For the Plaintiffs:

MS. TORREE J. BREEN (P62082)
Willingham & Cote, PC
333 Albert Avenue, Suite 500
East Lansing, Michigan 48823
(517) 351-6200

For the Defendants:

MR. STEPHEN HOWARD SINAS (P71039)
Sinus Dramis Brake Boughton & McIntyre,
PC
3380 Pinetree Road
Lansing, Michigan 48911
(517) 394-7500

Also Present:

Janet Jankowski

RECORDED BY:

Marcy A. Klingshirn, CER 6924
Certified Electronic Recorder
Network Reporting Corporation
Firm Registration Number 8151
1-800-632-2720

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1 Lansing, Michigan

2 Wednesday, July 29, 2015 - 10:33 a.m.

3 REPORTER: The Court Rules require me to state

4 that Network Reporting has agreed to provide court reporting

5 services to Ms. Breen at an agreed-upon rate for this

6 deposition and all others to follow today.

7 Do you solemnly swear or affirm the testimony

8 you're about to give will be the whole truth?

9 MR. JANKOWSKI: Yes.

10 RICHARD JANKOWSKI

11 having been called by the Plaintiffs and sworn:

12 EXAMINATION

13 BY MS. BREEN:

14 Q Can you please state your name for the record?

15 A Richard Lee Jankowski.

16 Q I'm Torree Breen. I introduced myself as the attorney for

17 Auto-Owners Insurance Company in this case and Home-Owners

18 Insurance Company in this case. Have you ever had your

19 deposition taken before?

20 A Yes.

21 Q And when was that?

22 A I don't remember. It was in the spring of this year.

23 Q And what was that for?

24 A Because Allstate required it.

25 Q Okay. It's for your litigation in Florida?

Page 3

1 A That's correct.

2 Q All right. So you know that she's recording everything that

3 we're saying. And I'll critique you about your "uh-huh's,"

4 "unh-unh's" and gestures. We have to say "yes," "no." And

5 if you answer a question, I'm assuming that you both heard

6 it and understood it; is that fair?

7 A That's fair.

8 Q Okay. So if you don't understand, let me know. And if you

9 need to take a break -- because I understand you're ill

10 today -- let me know that, too. So it's my understanding

11 you're currently in litigation in Florida against the tort

12 fees or driver; is that what you're understanding?

13 A Yes.

14 Q Okay. And that suit has not been settled; is that correct?

15 A That's correct.

16 Q And Allstate is your insurance company that's on the vehicle

17 for which you were involved in the accident; is that true?

18 A Yes.

19 Q Have they paid any of your bills in this case?

20 A I'm going to defer to my wife who's been handling all the

21 bills.

22 Q Okay. All right. Let me write that down or I'll forget to

23 ask her that. So you don't know whether you've accepted any

24 monies at all in regard to the claims and from anybody in

25 Florida; is that what I understand that you're telling me?

Page 4

1 A That's correct.

2 Q Okay. And what is your address?

3 A In Florida or here?

4 Q Here.

5 A 4026 Highland Terrace, Okemos 48864.

6 Q And how long have you lived at that address?

7 A Almost three years.

8 Q Would you consider yourself a Michigan resident?

9 A Yes.

10 Q And why is that?

11 A I lived in the state of Michigan since 1960.

12 Q And do you consider the 426 (sic) address your permanent

13 address?

14 A Yes.

15 Q Do you receive all your mail there?

16 A Correct.

17 Q And are most of your possessions there?

18 A We have two homes.

19 Q Right.

20 A So they're split.

21 Q Okay. Do you have your license on you?

22 A Yes.

23 Q Can I see it?

24 A Sure.

25 (Witness hands document to counsel)

Page 5

1 Q Thank you. Is this the only license that you have?

2 A Yes.

3 Q You're not licensed in Florida?

4 A No.

5 Q Is it okay if at the end of this deposition that the court reporter takes a copy and attaches this as Exhibit 1?

7 A Yes.

8 Q Okay.

9 MS. BREEN: And it is a Michigan license, for the record, and it was issued December 3rd, 2013. And it was issued to the 4026 Highland address that you had mentioned earlier.

13 Q And prior to living there, did you live in Michigan?

14 A Yes.

15 Q Okay. And do you remember your last address before this current address?

17 A 1109 Windreef -- that's one word -- W-i-n-d-r-e-e-f -- Circle, Okemos.

19 Q And how long were you at that address?

20 A Twenty-five years.

21 Q And there's a lovely lady at the end of this table. Is that your wife Janet?

23 A Yes.

24 Q And how long have you been married to her?

25 MS. JANKOWSKI: Better get this right.

Page 6

1 A Twenty-six years.

2 Q Putting you on the spot in front of your wife.

3 A Yeah.

4 Q Because if she just would have saw the dep transcript, she wouldn't have saw the "um."

6 A Good.

7 Q So did you get married in the State of Michigan?

8 A Yes.

9 Q Was there anybody residing with you at this address in Okemos, the first one, the 4026 address?

11 A Just my wife Janet.

12 Q Okay. Do you have children?

13 A Yes.

14 Q Are they past the age of majority?

15 A Yes.

16 Q And were they living with you on the day of your accident?

17 A No.

18 Q Is your voter registration here in Michigan?

19 A Yes.

20 Q Is it in Ingham County?

21 A Yes.

22 Q Meridian Township?

23 A Yes.

24 Q And it's my understanding you own two vehicles that you keep here in Michigan?

Page 7

1 A That's correct.

2 Q What are the makes and models of those vehicles?

3 A 2005 Audi A4 and a 2009 Lexus GS350.

4 Q Did you own these vehicles on the day of your car accident in Florida?

6 A Yes.

7 Q When I talk about the -- when I say "car accident," I mean the accident that's the subject of this lawsuit and the subject of the lawsuit down in Florida.

10 A Yes.

11 Q And you understand them as one and the same?

12 A Correct.

13 Q Okay. And I'm clarifying that for the record. And at the time of the accident, the 2005 Audi and the 2005 Lexus, they were here in Michigan?

16 A Correct.

17 Q And were they garaged at your house that's located at 4026?

18 A One of them was.

19 Q Okay. Where was the other one garaged?

20 A I think my son had it down in Ann Arbor at school.

21 Q Those vehicles, do you allow for your children to use them?

22 A Yes.

23 Q When you're here back in Michigan like you are right now here in the summer, do you and your wife drive those vehicles?

Page 8

1 A Yes.

2 Q Okay. Are the vehicles titled solely in your name?

3 A I believe both of them are just in my name, but I'm not positive.

5 Q Does your wife have permission to drive those two vehicles?

6 A Sure.

7 Q Does she have permission since you've owned them?

8 A Sure.

9 Q Does she have to ask your permission before using them?

10 A No.

11 Q Okay. Does she have keys of her own?

12 A Yes.

13 Q Okay. And you have purchased Auto-Owners insurance or Home-Owners insurance -- I don't have my plan. I apologize. I probably should know that -- to cover those two vehicles; correct?

17 A No.

18 Q No? What insurance have you purchased to cover those two vehicles?

20 A The Allstate is for two cars we have in Florida.

21 Q Right. I thought I said Auto-Owners. Did I say "Allstate"?

22 A I think you did, but maybe I heard you incorrectly.

23 Q All right. The vehicles that you have here in Michigan, you have either Auto-Owners or Home-Owners insurance covering them; correct?

Page 9

3 (Pages 6 to 9)

1 A Correct.
 2 Q And you purchased them from an agent.
 3 A Correct.
 4 Q Do you know what agent you purchased them from?
 5 A Tom McCarthy.
 6 Q And do you deal with the insurance issues or is that
 7 something your wife would handle?
 8 A She mainly does.
 9 Q Okay. So you didn't arrange to purchase the insurance for
 10 those vehicles?
 11 A No.
 12 Q I'd have to ask her about that? So you've never had any
 13 discussions about -- with your agent in regard to coverage?
 14 A No. She handled that.
 15 Q Okay. So you probably don't know what type of coverage you
 16 purchased and for what vehicles through the Auto-Owners
 17 and/or Home-Owners; correct?
 18 A Correct.
 19 Q Oh, it's a Home-Owners policy. Okay. So I would defer all
 20 questions in regard to any coverages that you purchased in
 21 Michigan to your wife Janet; correct?
 22 A Correct.
 23 Q You wouldn't have any information to contradict anything in
 24 regard to what was purchased; is that what I understand?
 25 A Yes.

Page 10

1 Q Okay. So I won't ask you those questions. Now, as far as
 2 the vehicles that were -- or actually give me your address
 3 in Florida.
 4 A 28346 Altessa, A-l-t-e-s-s-a, Way, Bonita Springs 34135.
 5 Q And how long have you owned that property?
 6 A Four years.
 7 Q So is that -- is that like a vacation home to you?
 8 A Correct.
 9 Q That's not your main residence?
 10 A Correct.
 11 Q And you take any tax exemptions on the home in Michigan?
 12 A Yes.
 13 Q Okay. You file on your tax returns if that's your primary
 14 residence?
 15 A Correct.
 16 Q How many days of the year are you in Florida, if you know,
 17 approximately?
 18 A It varies. Depending on when I was working closer to full
 19 time, it was a lot less. In the early years, it would be
 20 holidays; Christmas, spring break, and then I may go down to
 21 play golf with some of my buddies for a week here and there.
 22 And then as I phased out of my practice, it became one
 23 month, two months, three months. And the year of the
 24 accident probably would have been closer to five or six, but
 25 I don't remember.

Page 11

1 Q What was the day of the accident?
 2 A May 25th, 2014. It's my anniversary.
 3 Q Happy anniversary.
 4 A Yeah.
 5 Q That's the way to celebrate. All right. So the -- on May
 6 25th, 2014, had you been in Florida the whole time from
 7 January 1st, 2014 through May 2 --
 8 A Yes.
 9 Q Okay. Had you had plans to return to Michigan at any point
 10 around that time?
 11 A We were supposed to leave 36 hours later.
 12 Q Wow.
 13 A It was Memorial Day weekend, so I was playing in a golf
 14 tournament the next morning. We had everything packed up to
 15 leave.
 16 Q Had you returned to Michigan at all between January and May;
 17 do you recall?
 18 A I don't believe so.
 19 Q And were you in Florida -- when did you go to Florida
 20 initially for this trip?
 21 A Oh, that would have been '13 -- it was later in the year,
 22 sometime in late November, I believe.
 23 Q Okay. So late November 2013 through May 2014, that was your
 24 trip to Florida and you were supposed to return 36 hours
 25 after your accident.

Page 12

1 A Correct.
 2 Q And when, in fact, did you return after your accident, if
 3 you can recall?
 4 A We weren't permitted by the physician because of my injuries
 5 until we came back just before Labor Day.
 6 Q Wow.
 7 A Because I couldn't fly because I had a collapsed lung,
 8 couldn't really drive because of all the traumatic injuries
 9 to my hip and chest.
 10 Q And from the time that you were in Florida from November
 11 2013 through May 2014, you had two vehicles in Florida;
 12 correct?
 13 A Correct.
 14 Q And what are the makes and models of those vehicles?
 15 A Well, the one that was hit was a 2014 Lexus GX460. The
 16 other vehicle was -- I'm not sure if it was a 2011 or 2012
 17 SLK, I believe, Mercedes.
 18 Q Do you still own these vehicles?
 19 A No. The Mercedes, yes.
 20 Q Okay.
 21 A The other one was totalled.
 22 Q And I forgot to ask you, the two vehicles that were in
 23 Michigan, were those the vehicles that you owned on the day
 24 of the accident?
 25 A Yes.

Page 13

4 (Pages 10 to 13)

1 Q Okay. And your son was using the 2009 Lexus in Ann Arbor?
 2 A No.
 3 Q The 2005 Audi?
 4 A 2005, yeah.
 5 Q Okay.
 6 A He had that with him.
 7 Q The 2009 Lexus was just in your garage waiting for you to
 8 return?
 9 A Correct.
 10 Q No one was using it?
 11 A Correct.
 12 Q And how long had your son been using the 2005 Audi?
 13 A Oh, off and on since we purchased it, which would have been
 14 in '07.
 15 Q Okay. And he's in college?
 16 A Yes.
 17 Q How old is he?
 18 A 24 now.
 19 Q And what's his name?
 20 A Brandon Jankowski.
 21 Q And this 2005 Audi and 2009 Lexus, they don't go to Florida
 22 with you when you go to Florida; correct?
 23 A That's correct.
 24 Q Okay. So am I right to assume that you would take a flight
 25 down to Florida and then use these two cars, this 2014 Lexus

Page 14

1 and this 2011 or '12 Mercedes?
 2 A No. Well, yes and no.
 3 Q Okay.
 4 A Sometimes we fly. But when we were coming back for several
 5 months -- i.e., the spring, summer -- we would drive the big
 6 SUV back, GX460.
 7 Q Okay. So the Lexus would come back to Michigan sometimes?
 8 A Yes.
 9 Q And when was the last time you had it in Michigan before the
 10 accident?
 11 A Oh, I bought it four months to the day before the accident,
 12 so it never -- the original one never got to Michigan. The
 13 replacement we brought back in -- around Labor Day weekend.
 14 Q Okay. So how did you get to Florida in November 2013? Did
 15 you fly?
 16 A We had a different car at that point.
 17 Q Okay. What car did you have?
 18 A We had a Lexus RX350 and that one, I think, was an '06.
 19 Q That was a car from Michigan?
 20 A That's correct.
 21 Q And you took that car down to Florida?
 22 A That's correct.
 23 Q And I'm assuming that you sold it in Florida or traded it in
 24 for a new car?
 25 A Correct; correct.

Page 15

1 Q Okay. And was -- so you had three cars in Michigan when you
 2 left in November 2013?
 3 A Yes; yes.
 4 Q But you took one and left two behind?
 5 A Correct.
 6 Q All right. And I'm assuming -- and correct me if I'm
 7 wrong -- that this 2006 Lexus was insured through
 8 Home-Owners Insurance Company when you left with it?
 9 A Correct.
 10 Q And then how long after you got to Florida did you buy a new
 11 car to replace it?
 12 A Approximately about six weeks, I believe. It was early
 13 January or sometime in January -- well, it was January 25th,
 14 because it was four months to the day when it got totalled.
 15 Q Okay. So January 2015 (sic) you bought the car, this Lexus
 16 that was involved in the accident?
 17 A Correct.
 18 Q And what dealership did you buy it from or --
 19 A Germain Lexus in Naples.
 20 Q And at that point did you trade in the 2006 Lexus?
 21 A Yes.
 22 Q Okay. And were you involved with the paperwork to
 23 transition this new vehicle to yourself?
 24 A Yes.
 25 Q Okay. Was the vehicle registered in your name only or was

Page 16

1 your wife's name on the vehicle, too?
 2 A I don't remember.
 3 Q But you would have the registration and titles somewhere,
 4 I'm assuming?
 5 A Uh-huh (affirmative).
 6 Q Did you ever receive a title from the State of Florida?
 7 A I believe so.
 8 Q And as you're sitting in the dealership, did you have to
 9 make arrangements for insurance for the vehicle?
 10 A Correct.
 11 Q And did you cancel the Auto-Owner -- or Home-Owners policy
 12 to buy Florida insurance?
 13 A On that specific car, yes.
 14 Q Okay. And who made those arrangements? Did you call an
 15 agent in Florida or did the dealership work that out for
 16 you?
 17 A I probably called Tom McCarthy, but I don't remember.
 18 Q In Michigan?
 19 A Correct.
 20 Q And he would have sold you a policy in Florida?
 21 A No. He cancelled --
 22 Q Okay.
 23 A -- the policy on the car we traded in, and he had us
 24 purchase insurance in Florida because the car was registered
 25 in Florida.

Page 17

5 (Pages 14 to 17)

1 Q Okay. And why is it that you decided to register the
2 vehicle in Florida?
3 A I'm not sure. Just because I think it was going to be
4 easier transferring plates. We had the problem with Jan's
5 car before.
6 Q What does that mean?
7 A I remember it was a hassle transferring the plate on -- I
8 don't know which car it was -- when we got her little
9 Mercedes.
10 Q So you purchased the Mercedes in Florida when you were down
11 there at one point and registered it in Michigan?
12 A I believe it was originally registered in Michigan.
13 Q Okay. And then you eventually transferred it to Florida?
14 A Correct.
15 Q And when you traded in this vehicle that you drove down to
16 Florida to start your, I'm guessing -- I'm going to call it
17 snowbird --
18 A Yup, that's what they say.
19 Q While we're up here in Michigan at minus 20 degrees, you
20 snowbirds are having fun. So when you took this vehicle
21 down to Florida you, I'm assuming, signed the title work to
22 the dealership right away to transfer it to them; is that
23 true?
24 A At the time, you know, in January when I received the new
25 car, yes.

Page 18

1 Q Okay. When you were going to Florida in November, did you
2 have intentions of selling the car and getting a new vehicle
3 in Florida?
4 A I had thought about it, but I hadn't really made any
5 decisions at that point.
6 Q Okay. So how did you get the title from Michigan to
7 transfer it to the dealership for a trade in?
8 A I don't remember.
9 Q All right. So you purchase this new -- this new Lexus that
10 was involved in the accident, and you had owned it since
11 January 2015 (sic); correct?
12 A Correct.
13 Q And you were driving that around in Florida?
14 A Correct.
15 Q Was your wife on the title of that vehicle or don't you
16 know?
17 A I don't remember.
18 Q Did she have your permission to drive the vehicle?
19 A Yes.
20 Q Was she able to drive it more than 30 days?
21 A I don't understand your question.
22 Q The whole time from January to May, did you allow her to
23 drive that vehicle?
24 A Yes.
25 Q Okay. And did she have keys to that vehicle?

Page 19

1 A Yes.
2 Q She didn't have to ask you permission to use that vehicle,
3 did she?
4 A No.
5 Q So regardless of who the title of the vehicles that you own,
6 it sounds to me like whatever is yours is hers; is that
7 correct?
8 A That's correct.
9 Q Now, your attorney gave me copy of the policy from the
10 insurance carrier Allstate if I can find what I did with it.
11 MR. SINAS: It's right there (indicating).
12 Q And it says your Allstate agent is Steve Roe. Do you
13 remember that gentleman?
14 A He owns the agency.
15 Q Okay.
16 A So I didn't use Mr. Roe specifically.
17 Q You used the agency, though, for which he works; correct?
18 A Correct.
19 Q All right. Do you recall going in to that agency and
20 purchasing the insurance to go on the vehicle?
21 A Yes.
22 Q Did you do this before you received ownership of the vehicle
23 from the dealership?
24 A Yes.
25 Q Okay. Do you recall who you met with?

Page 20

1 A I can look it up on my cell phone if you need it.
2 Q If it's something that's easy accessible to you.
3 A He's no longer with the agency.
4 (Witness Reviews Electronic Data)
5 A Josh White.
6 Q And so you were part of the meeting in purchasing the
7 insurance for this Lexus?
8 A Correct.
9 Q Do you recall what type of insurance you were trying to
10 purchase for it?
11 A No.
12 Q And it says it's effective January 25th, 2014. Does that
13 remind you of when you bought the car?
14 A That's right.
15 Q Okay. Are you aware of whether this policy's lapsed or been
16 cancelled because of lack of premium payment by you?
17 A No.
18 Q Okay. So you haven't gotten any notice of cancellation of
19 this Allstate policy?
20 A No.
21 Q And that Allstate policy was the policy that was intended to
22 cover that vehicle in Florida that you were driving, that
23 Lexus that you purchased?
24 A Yes.
25 Q Okay. And at any time did you ask your agent here in

Page 21

6 (Pages 18 to 21)

1 Michigan to provide coverage for that vehicle that was in
2 Florida?

3 **A I'll defer to my wife on that, but I believe that he wasn't**
4 **able to sell insurance in Florida.**

5 Q Why not? Did he give you a reason that you know of?

6 **A No.**

7 Q So when you purchase this vehicle in Florida, you weren't
8 under the -- and when you met with the insurance agent in
9 Florida, you weren't under the impression that you had
10 Michigan No-Fault on that vehicle, were you?

11 **A Can you repeat the question?**

12 Q When you met with the agent in Florida and you purchased the
13 vehicle in Florida, did you understand that you were
14 purchasing Michigan No-Fault insurance to be on that vehicle
15 in Florida?

16 **A I still don't understand what you --**

17 Q Did the agent in Florida represent to you that you were
18 purchasing Michigan No-Fault insurance to cover that vehicle
19 in Florida?

20 **A I don't believe we had any conversation about that.**

21 Q Okay. Did you get a copy of this policy that your counsel
22 gave to me when you purchased the insurance?

23 **A It came like three, four weeks later in the mail.**

24 Q And is this Allstate policy the same policy that you have on
25 the other vehicle that's in Florida?

Page 22

1 **A That's correct.**

2 Q Okay. And that vehicle is a Mercedes; right?

3 **A Correct.**

4 Q That at one point you did have Michigan -- you had it
5 registered in Michigan, but then you transferred the
6 registration to Florida; correct?

7 **A I believe so, but my memory after this accident is a little**
8 **foggy at times.**

9 Q Okay. Do you happen to know approximately when you
10 registered that Mercedes vehicle in Florida?

11 **A No.**

12 Q Was it a Florida vehicle before you purchased this new car
13 in 2015 (sic)?

14 **A Was the Mercedes a Florida car?**

15 Q Yes; yes.

16 **A Yes.**

17 Q Okay. And had you taken that Mercedes vehicle back to
18 Michigan at all after you registered it as a Florida
19 vehicle?

20 **A We did take it back one summer, but that might have been**
21 **the -- I don't remember at what point was it a Florida**
22 **vehicle or it was a Michigan vehicle. I don't remember.**

23 Q Okay. Do you need to take a break or anything?

24 **A No. I'll suffer through.**

25 Q Okay. And in January 2015 that vehicle, the Lexus that was

Page 23

1 involved in the accident, that vehicle had not made it back
2 to Michigan at all or to Michigan?

3 **A Correct.**

4 Q It was always in Florida?

5 **A Correct.**

6 Q And you used it in Florida; correct?

7 **A Correct.**

8 Q And you submitted an Application for Benefits to Allstate.
9 Do you recall doing that, requesting No-Fault or some kind
10 of coverage from them? Maybe this was intended for
11 Home-Owners.

12 MS. BREEN: I'm going to mark this Exhibit 1.
13 REPORTER: 2.
14 MS. BREEN: Or 2. I'm sorry.
15 (Deposition Exhibit 2 marked)

16 Q It's Exhibit 2. Did you --

17 MS. BREEN: Can you see it, Steve? I'm sorry. I
18 didn't make copies.

19 MR. SINAS: Not a problem.
20 (Counsel reviews exhibit)

21 MR. SINAS: Yeah. Okay.

22 Q Do you recognize that document?

23 **A No.**

24 Q No? You didn't fill that out?

25 **A It's not my handwriting.**

Page 24

1 Q Okay. On the third page -- is your signature on the third
2 page? I highlighted it just so -- for ease.

3 **A That is mine.**

4 Q Okay. So you signed that document, you just don't remember
5 looking at it?

6 **A I don't remember looking at it exactly.**

7 Q Okay. Have you read it in its entirety as you sat here?

8 **A No.**

9 Q Is there any information in there that you think is
10 inaccurate? If you could read it and let me know?

11 (Witness reviews exhibit)

12 **A Well, there's one question here or -- "At the time of the**
13 **accident were you in the course of your employment?" Well,**
14 **I have a contract that begins when I return, so technically**
15 **I believe I was, you know, in the course of employment; I**
16 **just hadn't started back up.**

17 MR. SINAS: Well, wait a minute. I just want to
18 say for the record that he might be misconstruing that term
19 for purposes of his response here; is that fair?

20 MS. BREEN: Yeah. I -- that's fair.

21 MR. SINAS: Okay. So this means at the time of
22 the accident were you working at that specific time, not
23 were you employed somewhere.

24 **A Right. That's why I wanted to clarify it.**

25 Q Yeah; yeah.

Page 25

7 (Pages 22 to 25)

1 A Because it says "no." But in reality, I have a contract and
2 I was going to start up four days later.
3 Q Right. But you weren't on your way to do dental work or
4 anything like that.
5 A No.
6 Q You just were still on your leisure --
7 A Right.
8 Q Right. Yeah. All right. That's all I want to ask you from
9 that. All right. As you sit here, do you know what the
10 license number is for the vehicles down there?
11 A No clue.
12 Q Okay. Do you remember the accident?
13 A No.
14 Q You don't have any recollection of any facts whatsoever?
15 A Only thing I remember is when the ambulance driver was
16 moving me to the helicopter. It aroused me and I asked them
17 to adjust the cervical neck brace that I was in. He said,
18 "We can't do anything until we get you in the helicopter,"
19 and I heard the blades turning and then I went back out.
20 Q Okay.
21 A And then 6:30 in the morning my wife came in to the
22 emergency area where I was and said that they had released
23 her.
24 Q Uh-huh (affirmative).
25 A She handed me my cell phone and said, "If you need me, call

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1 me."
2 Q Okay.
3 A That's about the only two episodes that I do remember.
4 Q All right. So you had purchased this vehicle in January
5 2015 (sic), you and your wife were driving it throughout
6 Florida; is that correct?
7 A That's correct.
8 Q So I'm guessing that you didn't keep any chart as to who
9 drove it more versus the other, but you both had access to
10 it and drove it?
11 A Correct.
12 Q And you weren't working while you were down in Florida?
13 A No.
14 Q And can you recall exactly what you were doing on the day of
15 the accident before the accident occurred?
16 A Not really.
17 Q Do you know where --
18 A I remember that that evening, because it was our
19 anniversary, we were at a restaurant and we had taken our
20 two daughters and their husbands out to dinner for our
21 anniversary. And I do remember starting to drive home, and
22 that's where it goes blank.
23 Q Okay. So do you have -- do you have daughters that are in
24 Florida?
25 A Correct.

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1 Q Do they live in separate households?
2 A Yes.
3 Q Does anybody stay with you at that house in Florida?
4 A No.
5 Q Just you and your wife?
6 A Correct.
7 Q So they -- did they drive with you?
8 A My daughter who lives in the same development drove with us
9 and her husband; the other daughter just met us at the
10 restaurant.
11 Q So you had four people in the vehicle?
12 A Correct.
13 Q And were you driving?
14 A Correct.
15 Q Before you went out on this excursion to the restaurant, did
16 you and your wife do anything else? Were you anywhere else
17 that you recall?
18 A I don't recall.
19 Q Do you recall if you had any alcohol that day?
20 A We had a bottle of champagne sent to our table, so all six
21 of us had a part of a flute of champagne.
22 Q Okay.
23 A I was getting up early to play in this golf tournament, so I
24 didn't want to drink.
25 Q All right. So you don't recall anything prior to going to

Page 28

1 the restaurant; is that what I understand?
2 A Nothing vivid.
3 Q And your daughter went with you. How old was she?
4 A She was 30 at the time.
5 Q What's her name?
6 A Rachel, last name Lawrence, L-a-w-r-e-n-c-e.
7 Q And what's her husband's name?
8 A Justin.
9 Q Do you know approximately what time you were at the
10 restaurant?
11 A I'd have to say 7:00-ish.
12 Q And so you ate dinner there?
13 A Correct.
14 Q Do you remember what you ate or anything like that?
15 A No.
16 Q Do you know how long you were at the restaurant?
17 A Probably two, two-and-a-half hours. I don't remember
18 exactly when we decided to leave. It certainly wasn't late.
19 As I said, I was playing in this golf tournament early the
20 next morning.
21 Q Okay. What restaurant did you go to?
22 A It was called Truluck's, T-r-u-l-u-c-k-'s.
23 Q Okay. And the six of you sat together?
24 A Yes.
25 Q So you probably left about 9:30, 9:00 -- 9:00, 9:30?

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8 (Pages 26 to 29)

1 **A I really can't tell you.**
 2 Q Was it dark outside; do you recall?
 3 **A Yes.**
 4 Q And when you left, you were driving?
 5 **A Correct.**
 6 Q And your daughter and her husband were in the back seat?
 7 **A Yes.**
 8 Q And your wife was in the front seat?
 9 **A Yes.**
 10 Q And was your daughter sitting behind you?
 11 **A Yes.**
 12 Q Once you left the restaurant, do you recall which direction
 13 you were going?
 14 **A North.**
 15 Q Do you know what road that was?
 16 **A Livingston Road.**
 17 Q That's where the accident occurred; correct?
 18 **A Correct.**
 19 Q And is this a four-lane highway?
 20 **A It's an urban road. It's not -- I wouldn't consider it a**
 21 **highway. It's four or five lanes; it might have a turn**
 22 **lane.**
 23 Q Okay. So two lanes on your side, two lanes on opposing
 24 traffic and then a middle turning lane; does that sound
 25 about right?

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1 **A Yes.**
 2 Q And did you have to turn left or right to get out of the
 3 restaurant?
 4 **A Well, the Livingston Road was not the first road that we got**
 5 **on.**
 6 Q Okay.
 7 **A There was some other city streets to get to Livingston which**
 8 **is the north/south road.**
 9 Q Okay. Why don't you tell me about your route from the
 10 restaurant as to what you did?
 11 **A We got on 41 and went a short distance to Airport Pulling,**
 12 **went north approximately a mile and a half to Radio, Radio**
 13 **only a mile and that was -- that would have been east on**
 14 **Radio, and then we turned left on Livingston.**
 15 Q So you were in the car approximately five to ten minutes
 16 before the accident?
 17 **A Ten-plus minutes.**
 18 Q You didn't make any stops before the accident?
 19 **A No.**
 20 Q Are these roads you turned on, are they streetlights or do
 21 they have Stop signs?
 22 **A I think they all have stoplights.**
 23 Q Okay. So you turned from Radio to get on to Livingston?
 24 **A Correct.**
 25 Q And which direction do you have to turn on Radio to get to

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1 Livingston to go to your home? You said turn left?
 2 **A Turn left and that heads you north on Livingston.**
 3 Q And how far, if you can recall, were you on Livingston
 4 before this car accident?
 5 **A Oh, I'm not a good judge of that; two to three miles.**
 6 Q Do you know if you're in the right lane or the left lane?
 7 **A I don't remember.**
 8 Q Did you have your seatbelt on?
 9 **A Yes.**
 10 Q Did your wife have her seatbelt on?
 11 **A Yes.**
 12 Q Do you know if your daughter and her husband had their
 13 seatbelts on?
 14 **A I really don't know.**
 15 Q And it was dark outside?
 16 **A Yes.**
 17 Q Had it been raining; do you know?
 18 **A No.**
 19 Q It was not raining?
 20 **A No.**
 21 Q Okay. Did the roads have any slippery substances on it such
 22 as water, oil, tar?
 23 **A Not to my knowledge.**
 24 Q Do you recall the accident occurring?
 25 **A No.**

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1 Q So you don't know what side the vehicle was struck?
 2 **A I saw the pictures of the car, so I know it was hit on my**
 3 **side, the front driver's wheel well where he made impact.**
 4 Q Okay. Were you going through an intersection when this
 5 accident occurred?
 6 **A Yes.**
 7 Q And did you have the green light?
 8 **A Yes.**
 9 Q Was it turning yellow?
 10 **A I don't believe so.**
 11 Q Yellow turning red?
 12 **A I don't believe so. He was being chased by the police.**
 13 Q Do you know what the speed limit is on that road?
 14 **A No, not accurately.**
 15 Q Do you know how fast you were driving?
 16 **A Probably 40.**
 17 Q Had you looked down before the accident to know that; do you
 18 remember?
 19 **A Not really at that moment in time, but you have a sense of**
 20 **how fast your car is going. And that's a truck and it**
 21 **doesn't accelerate really fast, so every time I would look**
 22 **it was always in the 40-ish.**
 23 Q Now, when you were going through this intersection, had you
 24 been stopped at the light and started moving or was it --
 25 **A I don't know.**

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9 (Pages 30 to 33)

1 Q -- you were just driving through?
 2 A **I don't know. I truly don't know.**
 3 Q You just know that you were hit and, by looking at the
 4 vehicle, you knew you were hit on your side?
 5 A **Correct.**
 6 Q You have no recollection of it?
 7 A **None.**
 8 Q Do you know if your air bag was deployed?
 9 A **I don't know that, but my family told me all the air bags**
 10 **were deployed.**
 11 Q Okay. Are you the one that was injured the most in this
 12 accident?
 13 MR. SINAS: Objection to form. Go ahead.
 14 THE WITNESS: I can go ahead and answer?
 15 MR. SINAS: Yes.
 16 A **All four of us were injured. To say that I was the worst,**
 17 **my wife would object to that probably. She had a lot more;**
 18 **traumatic brain injury, she had a torn meniscus on her right**
 19 **knee. My son tore the labrum -- son-in-law tore the labrum**
 20 **on his right shoulder. We were all injured. I'll leave it**
 21 **at that.**
 22 Q Were you all air flighted, do you know, to the hospital?
 23 A **No, only myself.**
 24 Q So you only had one bottle of champagne that you split
 25 between six people?

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1 A **Yes, as far as my consumption.**
 2 Q Right. And that's all I'm asking. I don't know how much
 3 everybody else had to consume. Maybe they had more, but
 4 you're the important one because you're the driver. Do you
 5 know what kind of champagne it was?
 6 A **No clue.**
 7 Q Are you right- or left-handed?
 8 A **Right.**
 9 Q Is it your understanding that the vehicle that hit you, the
 10 person who was driving the vehicle was uninsured?
 11 A **That's my understanding. That he had minimal insurance.**
 12 Q I think I might have asked you this and forgive me if I did.
 13 Did you settle any claims with anybody at all, any of the
 14 parties at all?
 15 A **No.**
 16 Q Okay. And you reported this incident to your insurance
 17 company Allstate?
 18 A **Yes.**
 19 Q And you don't know if they've paid any claims or anything as
 20 you sit here?
 21 A **I don't. My wife would be able to answer that.**
 22 Q Okay. And you don't have any recollection of the vehicle
 23 coming on you, so you didn't notice what --
 24 A **No; no.**
 25 Q -- had anything happen? And what hospital were you taken

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1 to; do you know?
 2 A **Lee Memorial.**
 3 Q Do you know where that's at?
 4 A **Fort Myers, Florida.**
 5 Q And how long were you in the hospital?
 6 A **That was -- I was hit late Sunday night, and I didn't leave**
 7 **'til Thursday evening.**
 8 Q What injuries did you sustain from the car accident?
 9 MR. SINAS: Let me just object. Requires expert
 10 medical testimony. He can testify to his understanding of
 11 his injuries. You can go ahead.
 12 A **And now I can?**
 13 Q Uh-huh (affirmative).
 14 A **I had eight broken ribs, fractured sternum, left**
 15 **pneumothorax, hematoma of my left hip, bulging discs in the**
 16 **thoracic lumbar area, separated left shoulder classified as**
 17 **a stage 3 -- I believe that's how they classified it. I had**
 18 **abrasions on my forehead. Did I say the fractured sternum?**
 19 Q Yup.
 20 A **Those were the main ones.**
 21 Q Okay. Were you bedridden as a result of those injuries?
 22 A **Yes.**
 23 Q And how long?
 24 A **For those four days. They had to bring a physical therapist**
 25 **in on the last day to teach me how to get out of bed.**

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1 Q Did you have any surgeries to fix any of these issues that
 2 you just explained to me?
 3 A **Not at this point.**
 4 Q Did you have any casts on any of these issues as a result of
 5 fractures?
 6 A **No.**
 7 Q How about any slings? Did they put your arm in a sling?
 8 A **No.**
 9 Q How were they treating your separated shoulder?
 10 A **Physical therapy. They wanted to try that first before they**
 11 **would intervene with a surgical procedure.**
 12 Q Did they end up performing surgery on your shoulder?
 13 A **No. I'm still in physical therapy.**
 14 Q And are you in physical therapy here in Michigan?
 15 A **Yes.**
 16 Q Where at?
 17 A **It's called Exclusive Physical Therapy off of Creyts Road.**
 18 Q And you've been there since you've been back to Michigan?
 19 A **Correct.**
 20 Q And that would have been September 2014?
 21 A **Well, we did a short stint with a physical therapist,**
 22 **September through part of October, then we went back to**
 23 **physical therapy in Naples. And then once we got back here**
 24 **in June, we picked up again with this physical therapist.**
 25 Q Okay. So I guess I didn't ask you this question. After you

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10 (Pages 34 to 37)

1 got back here Labor Day -- around Labor Day of last year,
 2 2014, have you since gone back to Florida?
 3 **A Yes. We went back at the end of October. We only stayed, I**
 4 **think, seven weeks.**
 5 Q And you returned when in 2015?
 6 **A I think the end of the first week of June.**
 7 Q I think I was using the wrong years when I was asking you
 8 those questions before, wasn't I?
 9 **A It is confusing.**
 10 Q No. I think I was using the year 2015 for the car accident
 11 or when you returned, when you purchased the vehicle.
 12 MS. BREEN: Can we make a record correction?
 13 MR. SINAS: We can.
 14 MS. BREEN: I don't want to have to go through all
 15 those questions. I think I was using 2015.
 16 MR. SINAS: I think you were. So you basically,
 17 in the timeline of your questioning everything, was kicked
 18 forward a year.
 19 MS. BREEN: Right.
 20 MR. SINAS: And when he was talking about when he
 21 bought the car and all that, --
 22 MS. BREEN: Right.
 23 MR. SINAS: -- you then answered the questions as
 24 if he was agreeing it was 2015.
 25 MS. BREEN: It was '15, right.

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1 THE WITNESS: It was '14.
 2 MS. BREEN: And it happened in '14. Okay.
 3 MR. SINAS: So we're going to have a reasonable
 4 agreement on the record here that the questioning regarding
 5 the timeline leading up to the accident really should be
 6 kicked back a year in time to 2014.
 7 MS. BREEN: Yes. And I apologize for making that
 8 mistake.
 9 MR. SINAS: It's okay. At one point I thought I
 10 was missing something. I didn't -- I should have said
 11 something, but I thought maybe I was missing something.
 12 MS. BREEN: We're both sleeping on the wheel here.
 13 MR. SINAS: That's fine.
 14 MS. BREEN: I apologize.
 15 Q So the accident happened in 2014 of May, and the purchase
 16 was in January 2014 instead of '15. I apologize so much.
 17 So you basically stayed seven weeks in 2014 in Michigan
 18 because really you wanted to come back in May 2014, and then
 19 you were going to return again in the fall of 2014 and do
 20 what you did the year before; is that true?
 21 **A That's correct.**
 22 Q But you got in this accident, so you ended up staying in
 23 Florida until September 2014, came back for a few weeks, and
 24 then returned to Florida again with your original plan and
 25 then came back again June 2015, this year?

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1 **A Correct.**
 2 Q Okay.
 3 **A It certainly is confusing.**
 4 Q Yes. But had you not been in the accident, you would have
 5 came back and stayed basically the spring through the
 6 summer, early fall?
 7 **A Spring, summer and fall, yeah.**
 8 Q And then left in the late fall?
 9 **A We usually would leave in first week in November before the**
 10 **snow gets nasty.**
 11 Q Okay. So when you were in Michigan, you treat when you're
 12 in Michigan and, when you're in Florida, you treat in
 13 Florida; correct?
 14 **A Correct.**
 15 Q And so when you're in Michigan, you do physical therapy with
 16 this place called Exclusive Physical Therapy; right?
 17 **A Correct.**
 18 Q Have you had any doctors that you've treated with in
 19 Michigan? Let's only stay in Michigan now when I'm asking
 20 these questions.
 21 **A Okay. Two weeks ago I had to go to the emergency room at**
 22 **the University of Michigan, and I don't know what physician**
 23 **saw me in the emergency room for my lower back spasms.**
 24 Q Was it around the time when you were supposed to take your
 25 deposition; right?

Page 40

1 **A Correct.**
 2 Q And how long did you stay at the University of Michigan?
 3 **A I was there probably four or five hours.**
 4 Q And how did they treat your back spasms?
 5 **A They wrote me scripts for Valium and hydrocodone and**
 6 **recommended that I see a spine clinic, which I'll be seeing**
 7 **tomorrow.**
 8 Q What spine clinic is that?
 9 **A University of Michigan Spine Clinic in Ann Arbor.**
 10 Q Okay. You'd be amazed at how many places are named "Spine
 11 Clinic."
 12 **A Yeah.**
 13 Q Do you know what doctor in particular you're supposed to be
 14 seeing?
 15 **A No.**
 16 Q All right. So you have this appointment tomorrow at U of M?
 17 **A Yes.**
 18 Q Do you have a family physician here in Michigan?
 19 **A My internist is Dr. McQuillan. He's at University of**
 20 **Michigan. And my cardiologist is Dr. Shea, and he's also at**
 21 **University of Michigan.**
 22 Q Before you were in this accident, did you have any medical
 23 issues such as heart disease, anything like that?
 24 **A High blood pressure and hyperlipidemia. That's about the**
 25 **two.**

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11 (Pages 38 to 41)

1 Q Diabetes, anything like that?
 2 A No.
 3 Q Otherwise healthy?
 4 A Otherwise healthy.
 5 Q Have you ever had any neck or back issues before the
 6 accident?
 7 A About 15 years ago I had some tingling in my left fingers,
 8 and I saw Dr. Jakubiak who had me do an MRI. And basically
 9 he said, since I wasn't having pain, that I suggest try not
 10 to be bending over patients so much because there was some
 11 cervical changes but not to the point that he wanted to
 12 intervene with surgery or anything like that. And frankly I
 13 got more conscious of that, and that tingling has
 14 dissipated.
 15 Q Okay. That was 15 years ago?
 16 A Got to be at least, maybe 20.
 17 Q Is Dr. Jakubiak practicing anymore; do you know?
 18 A No. He's dead.
 19 Q That's what I thought. I couldn't remember if I was
 20 thinking of the same doctor.
 21 A Yeah.
 22 Q Did you go to any other places for that issue?
 23 A No.
 24 Q Okay. And has your family physician at U of M been so for
 25 years this Dr. Shea, Dr. McQuillan?

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1 A Correct.
 2 Q Okay. Before the accident were you on any medications?
 3 A High blood pressure and Lipitor.
 4 Q Where would you get those medications filled?
 5 A Walgreens or CVS.
 6 Q Have you had any cancer or anything like that?
 7 A No.
 8 Q Have you been involved in any other motor vehicle accidents?
 9 A I was either 11 or 12 when my -- I was in the back seat of
 10 my parents' car when we were struck Christmas morning. None
 11 of us sustained any injuries.
 12 Q That's the only accident that you can recall?
 13 A Uh-huh (affirmative).
 14 Q "Yes"?
 15 A Yes.
 16 Q Have you ever injured yourself at work or anything like
 17 that?
 18 A No.
 19 Q Have you ever taken any falls where you've hurt anything?
 20 A No.
 21 Q Or broken any bones?
 22 A No.
 23 Q Any surgeries?
 24 A When I was 15, I had a pilonidal cyst removed and, when I
 25 was 9, I had tonsillectomy.

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1 Q Have you -- lost my train of thought. Have you ever had to
 2 engage in physical therapy before?
 3 A Yes.
 4 Q For what?
 5 A About somewhere 10 to 12 years ago I thought I had what was
 6 a rotator cuff injury. I saw a shoulder specialist at MSU,
 7 and the MRI showed that I had a calcification on the muscle.
 8 So they prescribed physical therapy to help -- and an
 9 ultrasound to break up that calcification on the shoulder
 10 muscles and was successful. I never had any reoccurrence.
 11 Q Have you had any memory issues before the accident?
 12 A No.
 13 Q Is there any genetics in your family for Alzheimer's or
 14 dementia?
 15 A My mother was diagnosed when she was 87.
 16 Q Do you think you have memory issues now as a result of the
 17 accident?
 18 A Yes.
 19 Q Can you give me examples of that?
 20 A I can't give you anything specific, but my wife and I will
 21 argue about when we did something the last few days. And so
 22 one or the other of us is right, but neither of us know
 23 who's right. And sometimes I use the wrong word.
 24 Q Okay. Have you been treating for a TBI?
 25 A Yes.

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1 Q Where have you been treating for that?
 2 A Down in Naples we saw Dr. Schengber -- he's a
 3 neuropsychologist -- and Dr. Kandel who's a neurologist, and
 4 they gave us mind games to help stimulate, you know, the
 5 return of our memory and executive function as they termed
 6 it.
 7 Q Do they actually have you seeing therapists down there for
 8 these mind games?
 9 A No. They just -- they had us purchase jigsaw puzzles, and
 10 my wife actually purchased like a Gameboy that had different
 11 memory games on it.
 12 Q So that type of traumatic brain injury that we're talking
 13 about isn't an injury where you're, like, so severely
 14 impaired you're hurting yourself or others around you
 15 because you can't perceive there's something wrong with you;
 16 is that true?
 17 MR. SINAS: I'm just going to object to the form
 18 of the question, but go ahead.
 19 A Well, early on we didn't realize how badly injured we were
 20 so, yes, I couldn't perceive -- I mean, we wanted to go home
 21 like two weeks after the accident which was -- he's going,
 22 "You can't leave." Finally the neurologist stepped in and
 23 said, "No, you're not leaving town." So we had some
 24 perception issues on the state of our bodies.
 25 Q Okay. But you were never delusional enough to hurt someone

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12 (Pages 42 to 45)

1 like stabbing them with a knife or --
 2 **A No; no.**
 3 Q -- aggressively assaulting them, that type of behavior?
 4 **A No; no.**
 5 Q Okay. Has your personality changed; do you think?
 6 **A Yeah. I'm more argumentative, and my wife will definitely**
 7 **agree to that.**
 8 Q Well, you're not arguing with her right now. All right. So
 9 have you noticed any changes in your vision?
 10 **A No.**
 11 Q How about your ability to sense smells or tastes?
 12 **A No.**
 13 Q Do you get lost when you're driving down the road?
 14 **A I've had episodes where I can't remember exactly where I'm**
 15 **supposed to turn, and it's still happening. Now that I'm**
 16 **back in Lansing, I had to visualize where the post office**
 17 **was in Okemos, who -- obviously I'd gone there so many times**
 18 **over the years, and it took me awhile to figure out where**
 19 **the post office was.**
 20 Q Has any physician wanted you to go to like a brain
 21 rehabilitation center to do rehab?
 22 **A No.**
 23 Q And it's my understanding from communications from your
 24 attorney Mr. Sinas that you're not making any claims for
 25 attendant care at this time or replacement services?

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1 **A Correct.**
 2 MR. SINAS: And just for the record, that's at
 3 this time for anything that's been rendered through the
 4 present date. There are no plans of making any claim in the
 5 short run. Obviously they reserve their right to make any
 6 claim going forward if they have the need to do so.
 7 MS. BREEN: Okay. So let me clarify this on the
 8 record. So anything up through today they're not making a
 9 claim on, and so like next month you're not going to say,
 10 "Oh, by the way, they needed attendant care for September
 11 2014?"
 12 MR. SINAS: No. Yeah; exactly. We're not going
 13 to have any claims for anything through the present time.
 14 If something changes their medical condition and they have
 15 those claims, we'll then present them and that will be for
 16 this point going forward.
 17 MS. BREEN: Okay. All right. And if that should
 18 occur, I reserve the right to re-depose obviously both the
 19 Counter-Plaintiffs/Defendants in this case if something were
 20 to change and require attendant care replacement services.
 21 MR. SINAS: On issues relevant to that new claim,
 22 yes. That would be good.
 23 MS. BREEN: Okay. All right.
 24 Q So we won't waste our time with that, because I'm assuming
 25 that you're able to get dressed and take a shower, --

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1 **A Yes.**
 2 Q -- use the toilet, feed yourself; correct?
 3 **A Yes, but I'll clarify it. When my back spasms, then I can't**
 4 **do it.**
 5 Q Okay. All right. Now, your attorney sent me this -- which
 6 we'll mark as Exhibit Number 3 -- yesterday.
 7 (Deposition Exhibit 3 marked)
 8 Q Do you recognize that exhibit?
 9 (Witness reviews exhibit)
 10 **A Yes.**
 11 Q What is that exhibit?
 12 **A The letter you're talking about?**
 13 Q Yeah, the entire exhibit.
 14 **A It's speaking to my contract at Greater Lansing Center for**
 15 **Dentistry.**
 16 Q Okay. Did you used to own Greater Lansing?
 17 **A Yes, I did.**
 18 Q Okay. And how long did you own that?
 19 **A 1978 through 2011.**
 20 Q And you sold it to?
 21 **A Dr. Palmer.**
 22 Q Dr. Palmer. And Exhibit 3 has the contract that you had
 23 with Dr. Palmer; is that correct?
 24 **A Correct. It spells out for the calendar years between 2011**
 25 **and 2014.**

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1 Q Okay. And at some -- it appears to me -- and I haven't had
 2 a chance to review it entirely, but you were under contract
 3 to perform dental work when you were here in Michigan?
 4 **A Correct.**
 5 Q Was there a number of patients that you were required to
 6 see?
 7 **A No. I was paid per hour unless she went on vacation, then I**
 8 **would work, or she became pregnant, then I would work on a**
 9 **different basis, a percentage of the gross fees.**
 10 Q Okay.
 11 **A But the basic contract was \$175 an hour times the stipulated**
 12 **hours.**
 13 Q What were the stipulated hours that you were supposed to
 14 work; do you know?
 15 **A 2011 was 1,000 hours; 2012 it was 750 hours; 2013 and 2014**
 16 **was 500 clinical hours.**
 17 Q Are all these clinical hours?
 18 **A Yes.**
 19 Q Okay. And clinical hours, that means when you actually go
 20 in and see patients?
 21 **A Right; when I'm in the office seeing patients, yes.**
 22 Q Okay. So it doesn't matter if you're filling out paperwork
 23 or anything like that at home, that's not one of your hours?
 24 **A Correct.**
 25 Q Okay.

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13 (Pages 46 to 49)

1 A It was just when I was at the office.
 2 Q So did you have any plans to renew a contract with her
 3 beyond 2014?
 4 A Yes. We had sort of a gentleman's agreement that the first
 5 four years I wanted some guarantees of income because I was
 6 nervous about retiring at 61. So in '15 we were going to
 7 revert back to the 35 percent of production is what I would
 8 make.
 9 Q What does that mean, 35 percent of production?
 10 A Gross fees.
 11 Q So in 2015 you had just received gross fees of the hours you
 12 put on?
 13 A Thirty-five percent of the gross fees.
 14 Q Okay. So you didn't have set hours that you were supposed
 15 to be in the office?
 16 A I would continue to work Mondays and Tuesdays. That was the
 17 arrangement. She worked Wednesday, Thursdays and Fridays.
 18 And then, if she took an extended vacation as she usually
 19 does in August, then I would work full time during that
 20 period of time.
 21 Q The contract hadn't been drawn up yet?
 22 A Right.
 23 Q Was there supposed to be some kind of written agreement that
 24 would evidence this?
 25 A There would have been, but we never got that far.

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1 Q So when you -- if you wouldn't have been in this accident in
 2 the year 2015, you would have came back from Florida and
 3 worked Monday and Tuesdays and received 35 percent of the
 4 gross fees that --
 5 A That I generated.
 6 Q -- that you generated?
 7 A Correct.
 8 Q Were you working towards this 500 hours or were you going to
 9 try to get less than that in 2015?
 10 A That would have been a good ballpark number. I mean, that
 11 was -- I did that in '13, and that was a comfortable number
 12 of hours that I worked, so I was happy with that.
 13 Q But you really can't tell us that because obviously we're
 14 trying to predict what would have happened --
 15 A Sure.
 16 Q -- and it could have been more, could have been less?
 17 A Right. Like I said, that 500 hours excluded if I worked
 18 when she went on vacations, so it generally turned out at
 19 times to be more.
 20 Q Have you violated any of the terms of this contract in the
 21 past as far as, in 2011, did you make your 1,000 hours that
 22 you were supposed to make?
 23 A Yes. I was diligent in doing that.
 24 Q And in 2012, did you make the 750?
 25 A Yes.

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1 Q In 2013, you made 500?
 2 A Yes.
 3 Q How about the 2014?
 4 A I didn't work at all.
 5 Q Didn't make any. And that's the last page or whatever that
 6 says she wants you to reimburse her 19,000; is that correct?
 7 A Right. Which I did.
 8 Q Okay. And Dr. Palmer voiced that she was happy with the
 9 arrangement that she had with you?
 10 A Oh, yes.
 11 Q Okay. And she had to bring in, I think, temps or something
 12 like that for '14?
 13 A Yes.
 14 Q Has she hired any of them to take your place?
 15 A Not at this point.
 16 Q And you're currently not working in 2015; is that true?
 17 A That's correct.
 18 Q And why aren't you working?
 19 A I attempted to go back the second week in June when we got
 20 back, and I saw just a few patients on Monday and my back
 21 began to really bother me to the point that I couldn't stand
 22 up straight. I tried it on Tuesday, and it continued to get
 23 more stiff and spasm. So I told her that I had to see the
 24 physical therapist back here and that not to book any
 25 patients for me from that point forward until I found out

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1 what was going on. And then it proceeded to get worse, so I
 2 ended up in the emergency room.
 3 Q Okay. So you think that event triggered you to go to the ER
 4 just recently?
 5 A Which event?
 6 Q The bending over the patients making your back spasm?
 7 A I don't know.
 8 Q Okay. Did any doctor give you a script keeping you off
 9 work?
 10 A Dr. Kandel, the neurologist, a year ago did.
 11 Q Okay. Is that something you're going to discuss with your
 12 doctor at the spine clinic?
 13 A That's correct.
 14 Q Okay. So based on your testimony previously, you would have
 15 had approximately probably somewhere between May and
 16 November to get these hours in that you were contracted to
 17 do?
 18 A Correct.
 19 Q And you'd planned on keeping consistent with 2013 and '14 in
 20 trying to get 500?
 21 A Uh-huh (affirmative).
 22 Q "Yes," for the record?
 23 A Yes.
 24 Q Okay. And do you know if the 2015 contract that you were
 25 discussing with Dr. Palmer that that was going to be a

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1 series of years or was it going to be just for 2015?

2 **A We didn't get that far. I mean, it was just open-ended.**

3 **She enjoyed that I was there taking up some of the hours**

4 **when she wanted to be away frankly in the summer. So it**

5 **was, as I said, a gentleman's agreement that, as long as I**

6 **was enjoying it and helping, I would continue that**

7 **arrangement.**

8 **Q Okay. And did you have a plan as far as how long you wanted**

9 **to do this arrangement?**

10 **A No, I didn't.**

11 **Q Okay. And did she provide you with any insurance benefits**

12 **or anything like that?**

13 **A No. I had to pay for any -- I had to pay for my Blue Cross.**

14 **Q Okay. And do you currently have Blue Cross and Blue Shield?**

15 **A I currently have Medicaid -- care.**

16 **Q Medicare?**

17 **A Medicare.**

18 **Q You said you had Blue Cross and Blue Shield?**

19 **A 'Til my 65th birthday in January.**

20 **Q And so at the beginning of this year, you no longer have**

21 **Blue Cross and Blue Shield?**

22 **A Correct.**

23 **Q And you elected to take Medicare in its place?**

24 **A Correct.**

25 **Q And no longer purchase Blue Cross and Blue Shield?**

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1 **A Correct.**

2 **Q Were you purchasing Blue Cross and Blue Shield before this**

3 **accident?**

4 **A Yes.**

5 **Q Okay. So the change in insurance has had nothing to do with**

6 **this car accident; is that fair to say?**

7 **A That's fair to say.**

8 **Q Okay. Do you happen to have your Blue Cross cards still or**

9 **not?**

10 **A No.**

11 **Q Okay. Would you be able to get the account information and**

12 **plan numbers and stuff like that for your attorney so that I**

13 **can have that information?**

14 **A Sure. I would have to call Michigan Dental Association.**

15 **They would certainly have it in their records.**

16 **THE WITNESS: Do you have that? Do you have both**

17 **our Blues?**

18 **Q Okay. So because you're eligible for Medicare, that's when**

19 **you elected to drop the Blue Cross?**

20 **A Correct.**

21 **Q Okay. Is there any other arrangements that you have with**

22 **Dr. Palmer that aren't outlined in this contract that's**

23 **marked as Exhibit 3?**

24 **A No.**

25 **Q Is there anything different that you guys were discussing**

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1 when you were trying to make this gentleman's agreement that

2 would change this contract significantly that you're aware

3 of or change the terms already in there?

4 **A Only that I was going to go to a 35 percent of my gross**

5 **production for my reimbursement as opposed to a hourly fee.**

6 **Q Now, I don't know anything about your business, and I know**

7 **that you ran it for some time. Is the 35 percent gross**

8 **production less than the \$175 an hour?**

9 **A Actually it comes out -- I calculated that, and it comes out**

10 **almost within a couple of dollars of the 175. I don't**

11 **remember if it was more or less, but it was right there. I**

12 **actually chuckled.**

13 **Q Okay. Now, when you do this dental work, do you have to**

14 **carry liability insurance on yourself?**

15 **A Yes.**

16 **Q Do you pay for that?**

17 **A It comes out of the gross salaries.**

18 **Q What else comes out of your gross?**

19 **A Well, the Blue Cross used to, any dues, any professional**

20 **continuing education classes. That's probably the majority**

21 **of the deductions.**

22 **Q Do you have to pay for any supplies?**

23 **A No.**

24 **Q Rental of equipment?**

25 **A No.**

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1 **Q How about staff?**

2 **A No.**

3 **Q Is there anything else you can think of that would reduce**

4 **your gross?**

5 **A Oh, there's a good one; laboratory fees.**

6 **Q How much are those typically?**

7 **A It just depends on the type of patient you see. It can**

8 **run -- it's random. It's all over the board. It depends on**

9 **how many crowns and bridges or dentures you would do that**

10 **month.**

11 **Q Okay. Laboratory fees, is that, like, x-rays and stuff like**

12 **that?**

13 **A No; no.**

14 **Q What do you consider a laboratory fee?**

15 **A No. I consider a prosthetic device made by an outside lab.**

16 **Q Okay. Do you have to pay for x-rays or anything out of your**

17 **gross?**

18 **A No, that's considered supplies.**

19 **Q Okay. How about rent? Do you have to rent anything?**

20 **A No.**

21 **Q All right.**

22 **(Deposition Exhibit 4 marked)**

23 **Q And your attorney gave us what I marked as Exhibit 4, your**

24 **2013 tax returns.**

25 **A Since I don't prepare them, I assume they're all correct.**

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15 (Pages 54 to 57)

1 Q Do you rely on Janet or do you rely on a CPA?
 2 **A A CPA.**
 3 Q Okay. They prepare them, you sign them?
 4 **A You bet.**
 5 Q And you think this is the copy that was signed and sent in
 6 to the IRS; do you recall?
 7 **A No, I don't recall.**
 8 Q Okay. And your preparer is Michael S. Flintoff?
 9 **A Correct.**
 10 Q Of Flintoff & Klein in Okemos.
 11 **A Correct.**
 12 Q And that would be who would have filed your 2014 taxes?
 13 **A They haven't been filed yet.**
 14 Q Okay. And I'm assuming that's probably because of the
 15 accident that you're late with those or am I wrong?
 16 **A I really don't know. Again when he sends it to me, I sign**
 17 **them.**
 18 Q Okay. Do you know if you got an extension to --
 19 **A Yes.**
 20 Q Okay.
 21 **A That's his typical MO.**
 22 Q Have you given him all the paperwork that he needs to file
 23 your taxes, do you think?
 24 **A Yes. I did that back in February or March.**
 25 Q Okay. So we may have to ask him why this is not done; is

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1 that what you're telling me?
 2 **A Yes.**
 3 Q You know that's always best in a deposition where you can
 4 say, "That person knows that. I don't know it."
 5 **A Yeah.**
 6 Q "Please stop asking me questions." All right. So from what
 7 I understand, you're claiming in your counter Complaint
 8 against Home-Owners is that you want to get reimbursed for
 9 the work loss that you have for 2014 and 2015 and
 10 potentially 2016 and that you want medical bills reimbursed,
 11 and those are co-pays from what I understand; is that true?
 12 Or is that again a wife question?
 13 **A I'm going to defer to my attorney.**
 14 Q Okay. And your mileage is something, too, that you're aware
 15 of that you're seeking in this lawsuit?
 16 **A Correct. We've been trying to keep notes on when we would**
 17 **go to physicians or physical therapists.**
 18 MR. SINAS: And for the record, the documents that
 19 you just had in your hand, Torree, are incomplete lists of
 20 out-of-pocket medical expenses they've paid, medical
 21 mileage, definitely incomplete, but we're just giving them
 22 as notes and records they maintained with respect to their
 23 claims. We will get you complete copies of the billing
 24 statements from the providers in the relatively near future
 25 here as we are requesting that information right now.

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1 MS. BREEN: Okay. All right. Well, I guess I'll
 2 mark these at the end and -- because it clearly doesn't have
 3 any bills on them. It's just kind of a spreadsheet, I'm
 4 assuming, that your office prepared; correct?
 5 MR. SINAS: No. They actually prepared them.
 6 MS. BREEN: Okay.
 7 MR. SINAS: We'll prepare a more comprehensive
 8 presentation once we get all the billing statements. And
 9 also some of that information is possessed by their attorney
 10 down in Florida, so we're going to try to get you all the
 11 information. But those documents are just their own general
 12 breakdown of things they know about, but they also know it's
 13 incomplete.
 14 MS. BREEN: Okay.
 15 Q As far as the Lexus is concerned that was involved in the
 16 accident, was it totalled?
 17 **A Yes.**
 18 Q Did the -- did Allstate provide reimbursement to get a new
 19 car?
 20 **A They reimbursed me but not for the complete amount.**
 21 Q What does that mean?
 22 **A I did a kind of a two-year lease that I paid up front. And**
 23 **I didn't realize that, when you do that, in the lease**
 24 **payments there's generally gap insurance that the lender**
 25 **has.**

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1 Q Uh-huh (affirmative).
 2 **A Well, because I paid it up front, I was the deep pocket, and**
 3 **the amount of money that Allstate reimbursed me was not what**
 4 **I owed on the vehicle. It was somewhere in the 5,- to**
 5 **\$6,000 separation. If I had done a traditional piece, that**
 6 **would not have happened.**
 7 Q Okay. So how much did you pay to buy the car?
 8 **A I believe it was 56,000.**
 9 Q Okay. And how much did you receive back from Allstate?
 10 **A I don't remember.**
 11 Q Have you purchased a new vehicle since?
 12 **A Yes; yes.**
 13 Q And what's that vehicle?
 14 **A It's another Lexus GX460.**
 15 Q Same vehicle?
 16 **A Same vehicle, different color though.**
 17 Q Is it bright and says "don't hit me"?
 18 **A Yeah, don't run from the cops.**
 19 Q And that one's registered in Florida?
 20 **A Correct.**
 21 Q And it's kept in Florida?
 22 **A Although we did drive it home for these few months that**
 23 **we're going to be here.**
 24 Q It's here right now?
 25 **A Yes.**

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16 (Pages 58 to 61)

1 Q Okay. Does it still have Florida insurance on it?
 2 A Correct.
 3 Q Have you been driving it around in Michigan since you've
 4 brought it up here?
 5 A Yes.
 6 Q And you're going to return with it in the fall?
 7 A Correct.
 8 Q And when are you returning to Florida this year?
 9 A Probably the end of the first week in November, but it's up
 10 for dispute because, if Michigan does well, I may want to
 11 stay for the Ohio State/Michigan game Thanksgiving weekend.
 12 MR. SINAS: We can only hope.
 13 THE WITNESS: Yeah.
 14 A But if they don't, then I'm heading to Florida.
 15 Q So the last two years, I wouldn't hold my breath.
 16 A Yeah, I know.
 17 Q If that says anything.
 18 A Yeah. So, you know, but it's up in the air.
 19 Q Okay. I assumed you were a big Michigan fan based on all
 20 your treatment at U of M when we've got MSU doctors right
 21 here.
 22 A Right; right.
 23 MR. SINAS: Jim Harbaugh is going to dictate your
 24 Florida travel plans.
 25 THE WITNESS: Yes, he is.

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1 Q So it sounds to me -- and correct me if I'm wrong -- that
 2 the majority of your treatment for these injuries was in
 3 Florida versus in Michigan?
 4 A Right.
 5 Q You're kind of doing some rehab here and there in Michigan?
 6 A Correct.
 7 Q Okay. So we'd have to go to Florida to get all your medical
 8 records. And it's so fun doing that out of state,
 9 discovery. And you stayed in the hospital for four days.
 10 Are there any other hospital visits that you had while
 11 you're in Florida?
 12 A I just -- I returned a week later and they did another -- I
 13 believe they did a chest x-ray then to see how my
 14 pneumothorax was doing.
 15 Q Uh-huh (affirmative).
 16 A But that was the last time. It was as an outpatient.
 17 Q Okay. And you named your neuropsych and your neurologist.
 18 Is there any other physicians that you treated with in
 19 Florida?
 20 A Yes. Dr. John Kagen, K-a-g-e-n, he's the orthopedic
 21 surgeon.
 22 Q Okay. Are these people in the Naples area, by the way?
 23 A Kandel is in Naples; Kagen's in Fort Myers.
 24 Q Okay. How far is Fort Myers from Naples?
 25 A Probably -- the hospital is about 20 miles north of our

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1 house but, I mean, they're -- like it's Naples, Bonita
 2 Springs and then Fort Myers, so they're continuous.
 3 Q Okay. All right. Any other doctors?
 4 A Those were the only three physicians that we saw.
 5 Q Okay. All right. Do you know the names of their facilities
 6 that they work out of?
 7 A I don't know what Dr. Kagen's is, but Dr. Kandel it was
 8 NASA, N-A-S-A.
 9 Q Okay.
 10 MR. SINAS: Just so we're clear for the record,
 11 you were asking doctors outside of the initial
 12 hospitalization?
 13 MS. BREEN: Yes.
 14 MR. SINAS: Okay. All right.
 15 MS. BREEN: Yeah.
 16 Q And you did physical therapy in Florida, too?
 17 A Correct.
 18 Q Where did you do that at?
 19 A I started at NASA at their own physical therapy unit. When
 20 we came back from staying for six, seven weeks in Michigan
 21 the fall of '14, I started up with a different physical
 22 therapist. The name of her company is THRIVE Physical
 23 Therapy. Her name is Dr. Mary Kay Rueth.
 24 Q Okay. Have you done any occupational therapy at all?
 25 A At NASA they had an occupational therapist and a physical

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1 therapist, and she worked on my separated shoulder.
 2 Q Okay. Did they have you do any speech therapy?
 3 A No.
 4 Q How about chiropractors? Have you seen any of those people?
 5 A No.
 6 Q Psychiatrists or psychologists?
 7 A Only the one who did the assessment, the neuropsychologist.
 8 Q Okay. So did you perform tests for him for a few hours?
 9 A Yes; yes.
 10 Q About six hours; does that sound right?
 11 A Yeah, it was a long day.
 12 Q Do you know if he found deficits?
 13 A I think he did, yes.
 14 Q Do you recall where?
 15 A No, I don't.
 16 Q And has Medicare to your knowledge -- and you might be
 17 saying to your wife -- this is a wife question -- have they
 18 paid any of your medical bills right now that you have them?
 19 A They've paid the physical therapy bills, yes.
 20 Q Do you know if they've sent you a lien letter saying that
 21 they want reimbursement because it's an automobile accident?
 22 A We just got one not long ago.
 23 Q Okay. Is that something that you can give to your attorney
 24 to give to us as well?
 25 A Sure; sure.

Page 65

17 (Pages 62 to 65)

1 Q Thank you.

2 MS. BREEN: Have you reported this to Medicare,

3 Steve, then?

4 MR. SINAS: Right.

5 MS. BREEN: Okay.

6 MR. SINAS: And they just -- oh, they might have

7 through Spivey.

8 MS. BREEN: Okay.

9 MR. SINAS: They just became in title over the

10 last few months.

11 Q Are you currently on prescription medications other than the

12 U of M ones that you discussed, the muscle relaxer, the

13 Valium?

14 A Well, I'm on blood pressure meds and Lipitor, and I have one

15 that I take sporadically for gastric reflux.

16 Q Okay.

17 A Oh, and I take -- I take a new drug that I just started in

18 May. I was diagnosed with A-fib, so it helps to regulate

19 the beat.

20 Q Okay. Did you have gastro reflux before the accident?

21 A Yes.

22 Q Okay. You're not going to relate that to the accident, are

23 you?

24 A No.

25 Q Okay. How about this -- you said you have this A-fib. Has

Page 66

1 anybody indicated that that's related to the car accident?

2 A I never really brought it up with the cardiologist.

3 Q Okay. What cardiologist do you treat with? Is that your

4 internist?

5 A No. His name is Gursoy, G-u-r-s-o-y. He's in Naples. And

6 then I have a cardiologist here, his name is Shea, which I

7 told you about.

8 Q Okay.

9 A But the one that diagnosed it was Gursoy.

10 Q So you don't know what's causing you're a-fib?

11 A No.

12 Q Where is your doctor in Florida located -- in Naples? -- the

13 cardiologist?

14 A Yes.

15 Q Okay. Does he have a name of his facility?

16 A That I don't know, but he's at NCH Hospital.

17 Q Okay. Did you have tests performed at NCH Hospital?

18 A I wore a monitor; a 10-day monitor.

19 Q Have you done any stress tests?

20 A I'll do that with this cardiologist back here in the fall.

21 Q Shea?

22 A Yes.

23 Q And he's at U of M?

24 A Yes.

25 Q Have you done any radioactive tests to see if --

Page 67

1 A No.

2 Q Okay. Were you having symptoms of the A-fib?

3 A Yes. I could feel sporadic --

4 Q Where you felt like your heartbeat was off?

5 A Yeah, palpitations.

6 Q And when did those develop?

7 A January of '15.

8 Q We have the right year there, not '14; right?

9 A Yeah. I was thinking about that.

10 Q Maybe I'll get my head on straight and get all the years

11 right. And before that, you haven't had any major heart

12 issues or --

13 A No, just the blood pressure.

14 Q Has anybody in your family had any heart issues at all?

15 A My father.

16 Q What did he have?

17 A He had an MI at 57.

18 Q Wow. Did he have anything before that?

19 A I think, yes, he had one in '54. He had a heart attack

20 then, too.

21 Q Did he survive both of those?

22 A No.

23 Q Did he die at 57?

24 A Uh-huh (affirmative).

25 Q Sorry to hear that.

Page 68

1 A That's why I have my yearly stress test.

2 Q When you have your stress test, it will be with Dr. Shea?

3 A Correct.

4 Q You've never had stress tests with anybody else?

5 A Correct.

6 Q Okay. So you were put on medication to deal with this

7 A-fib?

8 A Correct.

9 Q And how is that working for you?

10 A Seems fine. I haven't noticed any changes.

11 Q Okay. Can you tell me what exactly that you know about your

12 wife's injuries that she received in the car accident?

13 A Well, obviously the traumatic brain injury, the knee

14 meniscus, both lateral and medial meniscus tear, contusions

15 and abrasions. She had terrible rib contusions. Those are

16 the three that jump out at me. She had -- like I said, her

17 ribs and her back from the -- I theorize from the seatbelt

18 really traumatized her. She was black and blue.

19 Q How long did she stay in the hospital; do you know?

20 A She was released in the morning -- 6:30 the morning after

21 the accident.

22 Q Were either one of you released with any walking devices

23 like canes, wheel -- or, you know, wheelchair?

24 A No.

25 Q Okay. Neck braces?

Page 69

18 (Pages 66 to 69)

1 A No.
 2 Q Back braces?
 3 A No.
 4 Q They just said, "Hey, you have broken ribs. Grin and bear
 5 it?"
 6 A Yeah; yeah, that's basically it. Go home and -- it was
 7 terrible. Yeah, it was the blind leading the blind, and we
 8 couldn't do a very good job of taking care of one another.
 9 Q Did you have anybody come in to take care of you?
 10 A Luckily our two daughters live within 10 minutes of our
 11 house, and then the neighbors were wonderful. They would
 12 come over, they'd cook for us, do whatever we needed. My
 13 son-in-law's father brought a La-Z-Boy chair for me because
 14 I couldn't sleep in bed for more than an hour or so. Then
 15 I'd have to get up and sit in a -- you know, a recliner.
 16 And then I could go back to bed because of all the broken
 17 ribs. So we got a lot of help from neighbors.
 18 Q So when did you start feeling like you're more like
 19 yourself, you could get up easier, your ribs started to feel
 20 better?
 21 A About seven weeks we slept in the guest bedroom because our
 22 mattress was too firm. And when I laid down on that
 23 mattress, it really hurt severely. So we tried the guest
 24 bedroom, and that I could sleep on this one side because I
 25 was so damaged on the left side. So then I'd have to get up

Page 70

1 out of bed and then go sit in the chair and try to sleep for
 2 an hour or two.
 3 Q Okay.
 4 A I think we moved back -- about the seventh or eighth week
 5 back to our bedroom.
 6 Q And to your knowledge, are your rib fractures healed?
 7 A To my knowledge, yes.
 8 Q Did you have any complications like pneumonia or anything as
 9 a result?
 10 A No.
 11 Q Okay. Do you still have problems with your shoulder then?
 12 A Yes.
 13 Q What problems do you have with your shoulder?
 14 A Well, I'm limited in the amount that I can lift, because all
 15 the ligaments tore. And so the theory is they're trying to
 16 strengthen the muscles to help hold the separated shoulder
 17 in place. But I have problems lifting anything, you know,
 18 more than a small grocery bag. It aches -- kind of aches
 19 when I do use it and I'll get sharp pain, kind of a clanking
 20 noise where the separated shoulder, the AC joint kind of
 21 bangs into itself.
 22 Q Okay. And that's your left arm; right?
 23 A Uh-huh (affirmative).
 24 Q "Yes"?
 25 A Yes.

Page 71

1 Q So that isn't one of the issues that are prohibiting you
 2 from working, because you work with your right hand as a
 3 dentist; is that true?
 4 A No, you work with both.
 5 Q Okay.
 6 A You have to curl around the patient, and I tried that and
 7 that bothered me to kind of support.
 8 Q Okay.
 9 A You use the mirror with your left hand and obviously you use
 10 the drill with your right hand.
 11 Q Okay.
 12 A No. It was -- that was an issue.
 13 Q Okay. So your back and your shoulder make it difficult for
 14 you to work?
 15 A Correct.
 16 Q All right. Other than your back and shoulder -- because you
 17 said you had spasms and you said your shoulder gives you
 18 problems -- is there anything else that's giving you
 19 problems from the car accident currently?
 20 A The hematoma on my left hip is still not totally resolved.
 21 They're working with physical therapy to strengthen the
 22 muscles. I'm still numb on my left hip. So I have some,
 23 you know, major issues still with the left hip.
 24 Q And you didn't have any problems with any of these areas
 25 before the accident; correct?

Page 72

1 A Yeah.
 2 Q Okay. Didn't notice any shoulder pain in the left before?
 3 A No. It was on the -- I told you I had that calcification,
 4 but that was on the right shoulder.
 5 Q No hip pain before?
 6 A No; no.
 7 Q Okay. Have your doctors given you any type of prognosis in
 8 regard to your injuries?
 9 A Nothing, you know -- well, the orthopedic surgeon, as I
 10 said, wanted me to continue with physical therapy, because
 11 he says there's not a very good success rate on trying to
 12 reestablish the AC joint. He said there's a lot -- there is
 13 many failures as there are successes. So he really wasn't
 14 pushing me to do surgery, but he did talk about some stem
 15 cell, that they're starting to use stem cell therapy and
 16 wanted to know if I was interested in that.
 17 Q Is that something Medicare's going to pay?
 18 A Nothing.
 19 Q As I giggle.
 20 A And that's pretty expensive, so --
 21 Q Yeah. Is the stem cell therapy in Florida or are you
 22 supposed to go out of the country for that?
 23 A He's in Fort Myers.
 24 Q Okay. Is it an experimental therapy; do you know?
 25 A I don't know. He said he's been doing it for about six

Page 73

19 (Pages 70 to 73)

1 months, so I don't know.

2 Q All right.

3 MS. BREEN: Were you able to get me a dec sheet
4 for this?

5 MR. SINAS: Oh, yeah.

6 MS. BREEN: Do you know if -- because I don't want
7 to mark this if we could get one.

8 MR. SINAS: Yeah. Let me -- I'll just go print
9 out a copy.

10 MS. BREEN: Okay.

11 (Off the record)

12 (Deposition Exhibits 1 and 5 marked)

13 MS. BREEN: So while we were off the record, we
14 marked as Exhibit 1 the insurance cards that we know of or
15 are in Ms. Jankowski's purse and the two licenses of both
16 parties.

17 Q And you recognize that for Exhibit 1 and acknowledge that
18 that's what I relayed on the record?

19 A Yes.

20 Q Okay. I also marked as Exhibit Number 5 is the Allstate
21 policy that were on the vehicles located in Florida at the
22 time of the accident. Does that look --

23 A And this had the dec page for you?

24 Q Yes. Well, the dec page as well as the plan itself. Does
25 that look right to you?

Page 74

1 A Yes.

2 Q Okay. And to your knowledge, you paid all the premiums for
3 this policy on this Allstate?

4 A Yes.

5 Q Okay. Very briefly -- I forgot to do some introduction
6 stuff. What is your date of birth?

7 A January 10th, 1950.

8 Q Okay. And if you can give me your Social Security number?
9 We won't put it on the record, but I'll have it in my notes
10 for medical records.

11 A XXX-XX-XXXX.

12 Q And the insurance that you had available on the day of the
13 accident was through a Blue Cross and Blue Shield policy
14 that you had purchased that was health insurance; correct?

15 A Correct.

16 Q Did you have any disability insurance coverage at all to
17 cover for your work loss if you were to be disabled?

18 A No.

19 Q And you haven't received any payments from any insurance
20 company for your work loss, have you?

21 A No.

22 Q Okay. And you're on Medicare right now because you've
23 reached retirement age; right?

24 A I think it's mandatory at 65.

25 Q Okay. All right. And you're not pursuant to a disability

Page 75

1 that you've claimed through the Social Security
2 Administration; correct?

3 A I haven't claimed anything right now.

4 Q Social Security has not declared you disabled; right?

5 A No.

6 Q I say "right" and you're supposed to say "right." They
7 haven't been --

8 A Right.

9 Q -- you said "no." Okay.

10 A No, they haven't declared me.

11 Q All right. Then I'd have to ask you 800 questions about
12 that. All right. And so your whole work history entails
13 this business that you own that you sold to Dr. Palmer, and
14 now you're going to be a contract employee; correct?

15 A Correct.

16 Q All right. Have you ever filed any lawsuits previously
17 before the one that you filed in Florida and this one here
18 in Michigan?

19 A No.

20 Q Have you ever been sued other than this one here, this
21 lawsuit in Michigan?

22 A No.

23 Q Have you ever declared bankruptcy?

24 A No.

25 Q Have you ever been convicted of a crime?

Page 76

1 A No.

2 Q Did anybody back in Florida or here in Michigan ask you to
3 attend an independent medical examination with a doctor of
4 their choosing? Meaning it's not one of your treating
5 physicians.

6 A Yes.

7 Q Okay. And who did that?

8 A I don't re- --

9 THE WITNESS: Do you remember the name of the
10 physician? He was in Tampa.

11 MS. JANKOWSKI: Dr. Bifulco.

12 A Bifulco, yeah, B-i-f-u-l-c-o.

13 Q Is that pursuant to litigation you're involved with in
14 Florida?

15 A Correct.

16 Q Do you think one of the insurance attorneys asked you to do
17 that or the alleged at-fault driver?

18 A I don't know.

19 Q Okay. It wasn't your attorney and your expert, was it?

20 MS. JANKOWSKI: Yes.

21 MS. BREEN: It is your expert?

22 MS. JANKOWSKI: (Nodding head in affirmative)

23 MS. BREEN: Okay.

24 Q So your attorney asked you to go to that expert. Is there
25 anybody else that you have been evaluated by?

Page 77

20 (Pages 74 to 77)

1 A Yes, and I don't know the terminology. It was someone who
2 projects loss of income.

3 Q Economic expert; right?

4 A Correct.

5 Q And you don't remember this person's name?

6 A No. But, I mean, Mr. Spivey would have all that.

7 Q Okay. Are you currently drawing your Social Security
8 retirement benefits?

9 A No.

10 Q Why not?

11 A Because I've decided not to at this point.

12 Q Are you eligible at 65?

13 A Yeah. I think you're eligible at 62.

14 Q Okay. Are you waiting 'til 72 or something?

15 A Probably 66.

16 Q Okay. Do you know what your benefit will be?

17 A Not off the top of my head, no.

18 Q Okay. And you not taking the Social Security retirement has
19 nothing to do with this car accident; correct?

20 A Correct.

21 Q All right. How about pensions? Do you have any pension
22 plan?

23 A Yes.

24 Q And are you drawing money from that?

25 A Oh, yes.

Page 78

1 Q How much are you receiving from that?

2 A We started taking 20,000 a month.

3 Q Has that benefit changed as a result of the car accident?

4 A Yes.

5 Q What has changed about --

6 A Because we would not -- we would not have had to start as
7 soon as we did.

8 Q Okay. And who is that benefit from?

9 A It's called Mercer Advisors, and they have multiple stocks
10 plans.

11 Q Do you have any account information on that?

12 A Not on me.

13 Q Okay. So what was the plan in regard to the pension then?

14 What were you taking at the time of the accident?

15 A Nothing.

16 Q Nothing? Okay. You were living solely on the income that
17 you made at your dental practice here in Michigan?

18 A And the residual from the sale of the practice.

19 Q Okay. And how much was that?

20 A I don't remember off the top of my head.

21 Q Did you run out of money?

22 A Yes; yes.

23 Q Okay. When did you run out of that money?

24 A I think in -- it's a little foggy -- probably November of

25 '14. I think that's when we started to draw, in December or

Page 79

1 January.

2 Q Are you penalized from drawing earlier from your pension?

3 A No.

4 Q Would you have made more money if you would have held off a
5 month?

6 A Certainly.

7 Q What?

8 A Yes.

9 Q Is it a fixed pension as far as some people -- you probably
10 understand the difference between the pension plans where
11 you have a certain amount of money that you're going to get
12 no matter what?

13 A Right. No, it's not a defined benefit plan.

14 Q Okay. Sometimes I ask people that question and they look at
15 me like I'm nuts. I figured you probably would know. All
16 right. Is there any other benefits that you have or pension
17 plans, 401(k)'s or anything that have been affected by the
18 car accident?

19 A No.

20 Q Okay. And I think that you testified that you're planning
21 to work 'til approximately 2017?

22 A That would be a fair assessment.

23 Q And then you're going to totally retire in whole?

24 A Yes.

25 Q Start collecting the Social Security retirement benefit?

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1 And you haven't drawn on that yet?

2 A Social Security, no.

3 Q Okay. Do you go to a gym anywhere? Do you have a gym
4 membership?

5 A Yes.

6 Q Where?

7 A In the development we're in in Florida, we have a gym and
8 then, when I'm up here, the physical therapist has a large
9 facility that's like a gym, so we work there two to three
10 times a week. And we used to be members of the MAC, but we
11 had to quit.

12 Q Why did you have to quit that?

13 A Because they wouldn't -- they would give us, I think, like
14 four months where you didn't have to pay your full dues and
15 so, once we went beyond that point, they said, "Well, you
16 know, we've got to -- you've got to pay" and we said, "Well,
17 we can't use it and can they extend it?" "Nope." So we
18 said, "Well, we just have to quit."

19 Q Okay. That has nothing to do with the car accident; right?

20 A Well, indirectly because we didn't come back home.

21 Q Okay. I saw that you have a loss of consortium claim that
22 you filed in Florida and you have a UM claim here in
23 Michigan.

24 MS. BREEN: Can we go off the record for a minute?

25 MR. SINAS: Yeah.

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21 (Pages 78 to 81)

1 (Off the record)
 2 MR. SINAS: So Torree and I just had a
 3 conversation off the record about the fact that there is a
 4 count that was filed with the dec action on the
 5 under-insured motorist policy. Essentially because of
 6 uncertainties regarding whether that claim is even valid
 7 given whether Michigan law would apply or Florida law and
 8 other issues like that, we have agreed to not have Torree
 9 ask questions regarding the under insured claim, and I allow
 10 her to reserve her right to have another deposition in the
 11 future about the under insured claim itself and only about
 12 that issue, but I do allow her to reserve that right.
 13 MS. BREEN: Okay. And that's what I agreed to,
 14 too, and it'd be about damages and whether the policy
 15 applies if we get that far.
 16 MR. SINAS: Yes; understood.
 17 MS. BREEN: And hopefully Steve and I will figure
 18 out that answer in the meantime.
 19 MR. SINAS: Yeah.
 20 MS. BREEN: Okay. So I won't ask any questions
 21 about attendant care or replacement services or the UM
 22 claim. It sounds like we might be back if any of those
 23 claims rear their ugly head. Hopefully they don't but,
 24 okay.
 25 Q Do you guys have a handicap sticker status from the

Page 82

1 Secretary of State?
 2 A They gave us one, a temporary one for, I think it was, four
 3 to six months, but that has expired.
 4 Q Okay. And you haven't sought another one?
 5 A No.
 6 Q You're able to walk distances to get in and out of stores,
 7 that type of thing?
 8 A Yes.
 9 Q Okay. Your wife, too?
 10 A Yes. Although her knee bothers her to go up and down
 11 stairs.
 12 MS. BREEN: Now, I guess I won't really get into
 13 the social aspect of their life changes either. That's part
 14 of that stipulation; right?
 15 MR. SINAS: Yes.
 16 MS. BREEN: Okay. I'll skip that part.
 17 Q Have any of your doctors indicated that they do want you to
 18 have surgery as a result of these injuries that you've
 19 sustained from the car accident?
 20 A Just the shoulder.
 21 Q Okay. How long are they going to give you with your therapy
 22 before they actually give you surgery?
 23 A I have to go back in the late fall to Dr. Kagen, and he'll
 24 evaluate it at that time.
 25 Q Okay. And I notice in your deposition of today it's a Duces

Page 83

1 Tecum which means I ask you to bring some documents with. I
 2 want to see if you had these documents available. One of
 3 the questions that I asked or one of the things I asked you
 4 to bring are, "Any and all titles to the motor vehicles that
 5 were owned by you to either individually or together on the
 6 day of the accident." I'm assuming you didn't bring those
 7 titles today?
 8 A No.
 9 Q Is there any way that you can get copies of those?
 10 A Titles on which cars?
 11 Q The two in Florida and the two in Michigan on the day of the
 12 accident.
 13 A The title for the Mercedes is in Florida. I believe I would
 14 have the title on the GX here, and the other two I would --
 15 I definitely would have.
 16 Q Okay.
 17 A So three out of four, and we're going to back to Florida
 18 because our daughter is having a baby, so I could copy it
 19 and send it to Steve.
 20 Q Okay. Then I asked for any and other documents that would
 21 show ownership of the vehicles or the vehicle in Florida
 22 that was in the accident. I guess that would include the
 23 titles, registration, any of that stuff.
 24 A From the car that's no longer?
 25 Q Yeah.

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1 A Yeah. I have that -- I think I brought that with me.
 2 Q Okay. And the Allstate policy that we marked as an exhibit
 3 that I asked you to bring all insurance company policies
 4 covering the vehicle involved, this is the only insurance
 5 carrier that was covering that vehicle; correct? Allstate?
 6 A The only carrier, yes.
 7 Q Okay.
 8 "Copies of any and all insurance policies covering
 9 any and all vehicles owned by you individually on the
 10 date of the accident."
 11 I've got the Home-Owners policy, here's the Allstate policy.
 12 Are there any other policies that you're aware of that were
 13 covering any of your vehicles on the date of the accident?
 14 A No.
 15 MR. SINAS: Wait, but there's a umbrella policy;
 16 right?
 17 MS. JANKOWSKI: Uh-huh (affirmative).
 18 MR. SINAS: Through Allstate.
 19 MS. JANKOWSKI: Right.
 20 MR. SINAS: And does that policy -- does that
 21 policy cover that? No.
 22 MS. JANKOWSKI: Is it in --
 23 MR. SINAS: Yeah. No, it's a set policy. All
 24 right. There's an umbrella policy, Torree.
 25 MS. BREEN: And that would be for liability,

Page 85

1 though; right?

2 MR. SINAS: Yeah, but they told me that there's an

3 additional -- you thought there was an additional under

4 insured coverage within that?

5 MS. JANKOWSKI: Oh, there is. There is.

6 MR. SINAS: Because if you look at that policy, it

7 says 500- on the under insured, and they've always talked

8 about their claim as being a million. And I guess the

9 additional 500- comes from the liability or for the

10 umbrella.

11 MS. BREEN: Okay. So we need the umbrella policy.

12 MS. JANKOWSKI: I've got that here.

13 MS. BREEN: Okay.

14 MR. SINAS: Oh, you do?

15 MS. BREEN: See? She does have it all. See, we

16 should have started with her.

17 MR. SINAS: Can't rely on the guys.

18 THE WITNESS: Worthless.

19 Q All right. And then I asked you to bring all your paperwork

20 in regard to your No-Fault benefits that you're going to

21 claim at the time of trial. Steve has done a good faith

22 effort of trying to get me information, but we clearly don't

23 have those today. I'm relying on counsel to give me that

24 information, because it's not together yet, so --

25 MR. SINAS: That's fine.

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1 that covers it and, if not, I'm guessing your attorney will

2 get this information from you.

3 MR. SINAS: Just a couple quick follow-up

4 questions.

5 EXAMINATION

6 BY MR. SINAS:

7 Q At the time of the accident, you understood that -- it was

8 your understanding that you were still insured under your

9 Home-Owners insurance policy here in Michigan?

10 A Correct.

11 Q And that anything you were doing down in Florida wasn't

12 negating your coverage up in Michigan?

13 A Correct.

14 MR. SINAS: Nothing further. Thanks.

15 (Deposition concluded at 1:06 p.m.)

16 -0-0-0-

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1 MS. JANKOWSKI: Will we get a written list of what

2 we need to get?

3 MR. SINAS: We have it essentially.

4 Q Then I asked for claims for replacement services. You're

5 not claiming that to date. Attendant care services, you're

6 not claiming that to date. Medical mileage, it's my

7 understanding your attorney is still gathering that.

8 Prescription drugs --

9 MR. SINAS: We did give you some basic information

10 on that but, yeah, it's not complete.

11 Q Prescription drug coverage, your attorney is gathering

12 information for me. The allowable expenses which do include

13 the hospital bills, office visits, therapy visits, it sounds

14 like your attorney is still getting that for me, too.

15 MR. SINAS: Hang on real quick, Torree?

16 MS. BREEN: Huh?

17 MR. SINAS: Hang on just one second?

18 MS. BREEN: Sure.

19 (Off the record)

20 Q And then the other things I asked for, all your IRS

21 documents, I did get 2013, but it sounds to me like your

22 attorney is going to provide the other packs.

23 MR. SINAS: We have those on the jump drive.

24 We'll give those to you.

25 MS. BREEN: Yeah. All right. Okay. So I think

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23 (Pages 86 to 88)

Exhibit H

HOME-OWNERS INS. CO., ET AL v.
JANKOWSKI

JANET JANKOWSKI

July 29, 2015

Prepared by

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

HOME-OWNERS INSURANCE COMPANY, and
AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs,

v

File No. 15-0025-CK

HON. WILLIAM E. COLLETTE

RICHARD JANKOWSKI and
JANET JANKOWSKI,

Defendants.

/

DEPOSITION OF JANET JANKOWSKI

Taken by the Plaintiff on the 29th day of July, 2015, at
3380 Pinetree Road, Lansing, Michigan, at 12:00 noon.

APPEARANCES:

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11	Deposition Exhibit 7 marked	3
12	(2014 Florida Vehicle Registration)	
13	Deposition Exhibit 8 marked	39
14	(Richard's appointments)	
15	Deposition Exhibit 9 marked	39
16	(Richard's incomplete list of bills paid)	
17	Deposition Exhibit 10 marked	39
18	(Janet's incomplete list of bills paid)	
19	Deposition Exhibit 11 marked	39
20	(Janet's appointments)	
21	Deposition Exhibit 12 marked	54
22	(Janet's Application for Benefits)	

Page 2

1 Q Okay. And we just marked as Exhibit 6 and 7 some
2 registrations that you had in your files. Can you identify
3 them? What is Exhibit 6?

4 A It's a Florida vehicle registration for the Lexus. This one
5 is for --

6 Q When you say "this one," are you meaning Exhibit 6?

7 A Yes. Exhibit 6 is for -- it was issued on 12-8-14.

8 Q Okay.

9 A And this other vehicle registration, which is Number 7
10 exhibit, --

11 Q Uh-huh (affirmative).

12 A -- was issued on 6-18-14, which was for the white Lexus.

13 Q Okay. The white Lexus in Exhibit 7, that's your replacement
14 vehicle or the vehicle that was destroyed in the car
15 accident?

16 A I believe it is. I'm not really sure. I mean, it doesn't
17 have on here the date.

18 Q Actually it's got to be the Lexus for -- because they're
19 both registrations after the accident, so this has to be for
20 your new car, right?

21 A Maybe that's correct. Maybe it's the current registration
22 for the new car.

23 Q Yeah.

24 A One from date issued of 12 of '14 which would have been
25 after the accident, and this one of 6 of '14. Yes, they're

Page 4

1 Lansing, Michigan
2 Wednesday, July 29, 2015 - 1:20 p.m.
3 (Deposition Exhibits 6 and 7 marked)

4 REPORTER: Do you solemnly swear or affirm the
5 testimony you're about to give will be the whole truth?

6 MS. JANKOWSKI: Yes.

7 JANET JANKOWSKI
8 having been called by the Plaintiffs and sworn:
9 EXAMINATION

10 BY MS. BREEN:

11 Q Can you please state your name for the record?

12 A Janet Jankowski.

13 Q Ms. Jankowski, you just sat through your husband's
14 deposition so you heard the rules of a deposition, that you
15 need to speak clearly and no gestures, no slang. And I'll
16 correct you if you're not using "yes" and "noes."

17 MS. BREEN: Had a fun time yesterday. I had to
18 keep correcting the witness. I thought she was going to
19 kill me.

20 Q But I'm not trying to pick on you; I'm just trying to make
21 sure Judge Collette knows what is being said and can
22 understand it. Have you had your deposition taken as well?

23 A Yes.

24 Q Okay. And that's for the lawsuit in Florida?

25 A Right, in Florida.

Page 3

1 both --

2 Q I didn't notice that.

3 A Yeah, I didn't either. I was reading it and I couldn't
4 really tell.

5 Q All right. So we still don't have the registration or the
6 title for the vehicle that was involved in the accident?

7 A Correct.

8 Q Okay.

9 A Well, it may -- I don't know if it's on that jump drive or
10 not.

11 Q Okay. And your attorney is currently dealing with that, I
12 think.

13 A Yeah.

14 Q So okay. We'll look at that and hope that we have it. If
15 not, that's something you believe you and your husband can
16 get for us?

17 A Yes.

18 Q Okay. Great. You heard a lot of the questions I asked your
19 husband. I'm probably going to go through the same ones --
20 that's why I wrote them down -- so that I'll probably go
21 through the same order and see if there's anything you need
22 to correct. I'm assuming that you heard his testimony about
23 the residence of -- the residence issue in regard to where
24 you reside currently?

25 A Correct.

Page 5

2 (Pages 2 to 5)

1 Q And he testified, as you heard, that he believed the primary
2 residence for the two of you is in Okemos, Michigan.
3 A Uh-huh (affirmative).
4 Q Is that true?
5 A Yes.
6 Q And do you -- have you registered to vote here in Michigan?
7 A Yes.
8 Q Is that where you are registered here today? To vote?
9 A Yes.
10 Q Okay. And were you registered there on the day of the
11 accident?
12 A Yes, here in Michigan.
13 Q Okay. And do you get all your mail here in Michigan, your
14 bills, your account statements in Okemos, Michigan?
15 A Right. We have some forwarded to Florida or down there,
16 but --
17 Q Okay. And you file your taxes with the IRS listing Okemos
18 as your primary residence?
19 A Correct.
20 Q And you take tax exemptions under the homestead exemptions
21 for your house here in Okemos, Michigan?
22 A Yes.
23 Q Do you take any exemptions at all for your home in Florida?
24 A No.
25 Q And do you see your home in Florida as a vacation

Page 6

1 destination?
2 A Yes.
3 Q You would not consider that your primary residence?
4 A No.
5 Q And you heard the testimony that you and your husband were
6 the only two people living in your Okemos address on the day
7 of the accident; true?
8 A Correct.
9 Q And that no one was residing with you in your Florida
10 address at the time of the accident either; right?
11 A Yes.
12 Q Is the majority of your possessions here in Michigan?
13 A Most of them.
14 Q Okay. And it's always been your intentions to have a
15 permanent address in Okemos, Michigan; correct?
16 A Correct.
17 Q And you've been married for 26 years?
18 A Uh-huh (affirmative).
19 Q You're going to have to say "yes" or "no" for the record.
20 A Oh, yes.
21 Q And how many children do you have?
22 A Four.
23 Q And they're all beyond the age of majority?
24 A Yes.
25 Q And two live in Florida?

Page 7

1 A Yes.
2 Q And two live here in Michigan?
3 A Yes.
4 Q One's in school still?
5 A Yes.
6 Q And did you hear your husband testify that the one in school
7 is using one of the vehicles that you guys house here in
8 Michigan?
9 A He doesn't use it all the time, but sometimes he takes it.
10 Q Okay. You're here in Michigan right now and you have a 2006
11 Audi. Is that in your possession right now?
12 A Right now, no. He has it; our son Brandon has it.
13 Q Okay. And he has that in Ann Arbor at school?
14 A Yeah; yes.
15 Q And how long has he had that vehicle?
16 A Oh, he probably took it back maybe three or four months. He
17 doesn't keep it much because he walks most places. But in
18 the summer, he tends to keep it.
19 Q Okay.
20 A Just for a few months, and then he doesn't need it.
21 Q All right. And the 2009 Lexus, are you using that vehicle
22 currently?
23 A Yes.
24 Q The GM350; does that sound right?
25 A Right.

Page 8

1 Q And you heard your husband testify that you guys equally
2 share those two vehicles?
3 A Correct.
4 Q And regardless what the title says, you both have access to
5 the vehicles; correct?
6 A Yes.
7 Q You both have sets of keys?
8 A Yes.
9 Q You don't have to ask each other's permission to use them?
10 A No.
11 Q You, in fact, do use the 2005 and the 2009 vehicles that are
12 here in Michigan; correct?
13 A Correct.
14 Q And you heard his testimony in regard to the vehicles that
15 were in Florida, the -- let me see if I can find my notes --
16 the 2014 Lexus, which was involved in the accident which was
17 a GX460, you had access to that vehicle to use; correct?
18 A Correct.
19 Q You had had access to that vehicle more than 30 days to use
20 after you purchased it before the accident; true?
21 A Yes.
22 Q You had your own keys to that vehicle?
23 A Yes.
24 Q You were allowed to drive it, as far as you were concerned?
25 A Yes.

Page 9

3 (Pages 6 to 9)

1 Q You didn't have to ask your husband for permission; is that
2 true?
3 A Nope. That's true.
4 Q Do you know who is on the title for that vehicle?
5 A I believe it's Dick, but I'm not positive.
6 Q And when you say "Dick," you mean your husband Richard;
7 correct?
8 A Yes.
9 Q Okay. I'm going to use the same stipulations I had in the
10 last deposition that, if I'm talking about the accident, I'm
11 referring to the accident that you had in Florida. And I'm
12 not aware of any other accidents that you've been in, but
13 that's what I'm talking about when I ask you these
14 questions. Okay?
15 A Okay.
16 Q And I'm going to limit my questions based on the
17 stipulations that I have with counsel in the prior
18 deposition that we will not discuss attendant care,
19 replacement services or the UM portion of the case. And we
20 reserve the right to ask you those questions at a later time
21 should those issues come up and you make those claims
22 against my client Home-Owners insurance. Okay?
23 A Okay.
24 Q In the 2011 -- is it a 2011 or '12, the SLK Mercedes; do you
25 know?

Page 10

1 A '11.
2 Q '11?
3 A It's '11.
4 Q And that is a vehicle that was in Florida as well; correct?
5 A Correct.
6 Q And you purchased that vehicle here in Michigan; is that
7 what I understand?
8 A No. We purchased it in Florida.
9 Q Okay.
10 A I think we initially registered it here and had license
11 plates, but then it was a hassle. It was really hard.
12 Q Why was it a hassle?
13 A Well, I mean, because trying to do that when we purchased
14 it, it was very, very difficult being in Florida. And
15 then -- and we were planning to drive that car back and
16 forth, which I did when -- the first summer, so that would
17 have been the summer of '12, and then that was hard. It was
18 too little to drive, so we decided we weren't going to drive
19 it back and forth. We would just leave it in Florida. And
20 I suppose that's why we registered it there. I don't know.
21 Q Okay. So you bought the car in Florida, registered it in
22 Florida -- or in Michigan, and then you decided it was a big
23 pain so you re-registered it in Florida; right?
24 A Yes; right.
25 Q And in doing so, you had to call your insurance agent for

Page 11

1 Auto-Owners or Home-Owners and change your insurance; right?
2 A Correct.
3 Q And when would that have occurred; do you know?
4 A I don't know. I mean, I'd have to look that up. I know,
5 when we first purchased it, that would have been -- you
6 know, I don't know. It was in '11 that I bought. I don't
7 remember what year we bought it in. I think it was two
8 years old, but I'm not sure. Maybe it was a year old.
9 Q Okay.
10 A I don't know. I have no -- I'd have to look it all up. I
11 really don't know.
12 Q Okay. And you heard your husband testify that you guys took
13 a vehicle, and that was a 2006 Lexus?
14 A Yes.
15 Q Lexus RX350.
16 A Well, yeah. I don't know the year, but it was an RX.
17 Q Okay. And you -- that was a Michigan vehicle.
18 A Uh-huh (affirmative).
19 Q And you took it to Florida in the year of 2013 -- I'm going
20 to get the years right in this deposition.
21 A Oh, boy. I have to think.
22 Q In the fall of 2013 and you sold that vehicle in
23 approximately January 2014; does that sound right?
24 A Yes; that's correct.
25 Q You traded it in to get a brand new car in Florida, which

Page 12

1 was the 2014 Lexus GX460; correct?
2 A Correct; correct.
3 Q The vehicle that was involved in the accident in Florida;
4 right?
5 A Yeah.
6 Q Okay. And did you guys take that Lexus down to Florida with
7 the intentions that you were going to get a new vehicle once
8 you got to Florida?
9 A I didn't. I can't speak for my husband.
10 Q Okay. So after you'd arrived in Florida sometime in the
11 fall of 2013, you guys decided it would be a good idea to
12 trade it in for a brand new car?
13 A Right.
14 Q Do you know what precipitated that?
15 A I think -- yes, I do. We had driven the small one back and
16 forth, and we decided we weren't going to do that again.
17 And the RX -- we thought we would drive a bigger car down,
18 and so we drove the RX down. And it was getting old and we
19 thought, if this is going to be a car that we're going to
20 drive back and forth, we probably should get a new car.
21 Q Okay.
22 A And a bigger car.
23 Q All right. So you bought that car from a dealer in Florida.
24 A Uh-huh (affirmative).
25 Q Is it Germain Lexus?

Page 13

4 (Pages 10 to 13)

1 A Correct.
 2 Q Okay. And that was in early January 2014 or mid, somewhere
 3 in there; correct?
 4 A Yes.
 5 Q And when you went to purchase that car, did you have to have
 6 insurance already for the vehicle available? How did that
 7 work?
 8 A Yes. In order to take it off the lot, we had to have
 9 insurance. So we called someone there, because we didn't
 10 want to have to go through the hassle we went through with
 11 the Mercedes. And so we had an agent, I think, we had our
 12 home insurance with them there, and we called them.
 13 Actually I called my agent here first.
 14 Q Okay. And tell me what happened.
 15 A And he said they couldn't insure it in Florida.
 16 Q Okay. That's Tom McCarthy; right?
 17 A Right.
 18 Q So you call him said, "I have a new car I want to buy in
 19 Florida" --
 20 A Uh-huh (affirmative). And if it's registered here and then
 21 he said, "Well, you'll have to get insurance."
 22 Q So Mr. McCarthy didn't misrepresent to you that you were
 23 going to have insurance in Michigan, did he, on this vehicle
 24 you bought?
 25 A No, he didn't say anything about our insurance not covering

Page 14

1 anything. He just said he couldn't write or take a policy
 2 for Florida.
 3 Q Okay. When he told you he couldn't write a policy for the
 4 car in Florida, what did you think that meant?
 5 A I had no idea. I just thought he meant he couldn't give me
 6 the paperwork.
 7 Q Okay. At any point in the conversation, did he tell you
 8 that Home-Owners would be extending coverage for the vehicle
 9 in Florida?
 10 A No. I don't think I asked that question.
 11 Q So when he told you he couldn't write a policy in Florida,
 12 what did you do then? Did he give you any names of agents
 13 or did you have to find your own?
 14 A No, we just had our own home insurance.
 15 Q So you think you went back to the agent that sold you your
 16 home insurance for the Florida house?
 17 A (Nodding head in affirmative)
 18 Q "Yes"?
 19 A Yes.
 20 Q Okay. I can't see in my notes if your husband gave me the
 21 name of that guy. I'm trying to see.
 22 A White; Josh White.
 23 Q Steve -- was it Steve Roe?
 24 A Steve Roe Agency --
 25 Q There we go.

Page 15

1 A -- but Josh White, I think, was his name or something White.
 2 Q Okay. Is he in Naples?
 3 A Yes.
 4 Q I almost said Napa. Wrong state. All right. So Steve Roe
 5 out of Naples was writing your home policy, so you guys
 6 decided to call him?
 7 A Uh-huh (affirmative).
 8 Q Correct?
 9 A Right.
 10 Q And did you meet with him to discuss the policy that you
 11 were purchasing for your Florida vehicle -- or Mr. White, I
 12 guess?
 13 A I didn't, but I don't know if Dick did. I think he did.
 14 Q Okay.
 15 A Or maybe he did it on the phone. I'm not really sure.
 16 Q Well, you heard him testify he doesn't remember the details.
 17 A Uh-huh (affirmative).
 18 Q Were you under the impression at any point that the
 19 insurance you're purchasing in Florida was going to be
 20 Michigan No-Fault insurance?
 21 A I'm sorry. What's the question?
 22 Q Were you ever under the impression that the insurance policy
 23 that you were order- -- or purchasing in Florida was going
 24 to be Michigan No-Fault insurance to cover this new vehicle
 25 you purchased in Florida?

Page 16

1 A You'll have to bear with me. I have a really hard time
 2 since this accident putting multiple things together.
 3 Q Okay.
 4 A And this is a really long question.
 5 Q Okay.
 6 A So if you can break it down, maybe I can --
 7 Q All right. I'll try to do that.
 8 A Yeah, I just can't think like that.
 9 Q Do you understand that Michigan has Michigan No-Fault
 10 insurance; right?
 11 A Uh-huh (affirmative).
 12 Q You have to say "yes" or "no" for the record.
 13 A Yes.
 14 Q Okay. Were you ever under the impression that the insurance
 15 that you were purchasing in Florida to cover this brand new
 16 vehicle was going to be Michigan No-Fault insurance?
 17 A I never thought about it.
 18 Q Okay. Did any of the agents tell you that that's what you
 19 were purchasing?
 20 A No.
 21 Q Okay. And you don't -- you -- you recall having a
 22 conversation just with the agent for Home-Owners, and he
 23 told you he couldn't write for Florida vehicles; right?
 24 A Uh-huh (affirmative).
 25 Q "Yes"?

Page 17

5 (Pages 14 to 17)

1 **A Right.**
 2 Q Okay. And you don't recall having any conversations with
 3 any of the agents in Florida at this Steve Roe Agency?
 4 **A No.**
 5 Q You thought your husband dealt with them?
 6 **A Yeah, I think so.**
 7 Q Okay. So when you drove this new vehicle that you purchased
 8 at this Florida dealership off the lot, did you believe that
 9 you had insurance covering that vehicle?
 10 **A Yes.**
 11 Q Okay. Did your husband confirm that he had made those
 12 arrangements through the Steve Roe Agency?
 13 **A Yes.**
 14 Q Okay. And did you get a dec sheet that confirmed on the day
 15 that you took this car off the lot that confirmed that you
 16 did have coverage through that Florida insurance company or
 17 agency?
 18 **A Yes.**
 19 Q And it was Allstate Insurance?
 20 **A Correct.**
 21 Q And this Exhibit 5 I think you provided to me, this is the
 22 policy that covered that vehicle that was involved in the
 23 accident?
 24 **A Yes.**
 25 Q Okay. And as part of the declaration sheets, it says that

Page 18

1 there's a 2014 Lexus GX460. That's the vehicle that was
 2 involved in this accident; correct?
 3 **A Correct.**
 4 Q Okay. And that policy period began January 25th, 2014. Is
 5 that what you understand?
 6 **A Uh-huh (affirmative).**
 7 Q "Yes"?
 8 **A Yes. Sorry.**
 9 Q And is that the day that you guys purchased the vehicle from
 10 Florida?
 11 **A I'm really not sure. It was in January. I don't know if**
 12 **that was written ahead of when he actually picked up the car**
 13 **or if it was actually the same day. I don't know.**
 14 Q Okay. So you registered the vehicle in Florida and you
 15 probably received the plates within a matter of weeks; is
 16 that true?
 17 **A Yes. I think they gave us temporary plates.**
 18 Q Okay. So you had temporary plates. But you did eventually
 19 receive the plates from the State of Florida that gave you
 20 that Florida license plate to put on your Lexus; right?
 21 **A Correct.**
 22 Q And on the date of the accident, the vehicle had those
 23 plates on it; is that true?
 24 **A Yes.**
 25 Q Okay. And you don't know whether the vehicle was registered

Page 19

1 in both yours or your husband's name; right?
 2 **A Right.**
 3 Q Okay. But that didn't matter, because you both had equal
 4 access to it and could use it at any point; correct?
 5 **A Uh-huh; correct.**
 6 Q Okay. And you had owned it, from what you understand, from
 7 January 25th, 2014 until the time that the accident occurred
 8 in May 2014; right?
 9 **A Yes.**
 10 Q Okay. And on the day of the accident, your husband was
 11 driving the vehicle?
 12 **A Yes.**
 13 **(Off the record interruption)**
 14 Q And can you give us the address in Florida?
 15 **A 28346 Altessa Way, and that's Bonita Springs 34135.**
 16 Q Okay. And on the day of the accident, you weren't working
 17 anywhere; is that what I understand?
 18 **A Correct.**
 19 Q Had you retired from somewhere?
 20 **A Yes. I am a nurse practitioner by trade, but I also was an**
 21 **office manager in Dick's office. So I quit -- after he sold**
 22 **the practice, I worked one more year. So I worked through**
 23 **2011, and then I didn't work after that because we had two**
 24 **weddings in our family. Our girls were back to back, '11**
 25 **and '12.**

Page 20

1 Q Okay.
 2 **A And we had moved two houses, we had moved up here and down**
 3 **there, so we were getting organized in both places.**
 4 Q Uh-huh (affirmative).
 5 **A And then I transferred my RN license to Florida. I was**
 6 **going to not work as a nurse practitioner but possibly do**
 7 **something less stressful. So I had my RN license, but I**
 8 **never really had gotten out looking for a job yet when this**
 9 **happened.**
 10 Q Okay.
 11 **A So I really wasn't working.**
 12 Q All right. What is your date of birth?
 13 **A 4-5-50.**
 14 Q And how old are you?
 15 **A 65.**
 16 Q Are you collecting Social Security right now?
 17 **A Yes.**
 18 Q How much are you receiving?
 19 **A It's about \$1,000 a month.**
 20 Q And that's not -- it's retirement benefits, not disability;
 21 correct?
 22 **A Correct.**
 23 Q And have your benefits changed as a result of this accident?
 24 **A No.**
 25 Q Okay. Did you have a pension that you were drawing off from

Page 21

6 (Pages 18 to 21)

1 on the day of the accident?

2 **A No. On the day of the accident?**

3 Q Yeah.

4 **A No, I was not.**

5 Q And are you currently drawing off a pension now?

6 **A Yes. To be honest, our financial advisor draws out of what**

7 **we have, so I don't know where she's taking the money from.**

8 **Dick works with her on that. I'm really not --**

9 Q Who's your financial advisor?

10 **A Mercer.**

11 Q You're not going to make any claims for work loss benefits,

12 are you, as a result of this accident?

13 **A I don't think so. I mean, I don't know.**

14 Q Have you lost any money as a result of this accident that

15 you would have not lost?

16 **A No. Well, I guess the only money would have been if I would**

17 **have gone to work, but I hadn't really thought about that.**

18 Q But you didn't have any job offers or anything at the time?

19 **A No.**

20 Q Okay.

21 MS. BREEN: And I think that's something you

22 represented, too, that you weren't making a work loss claim?

23 MR. SINAS: For her?

24 MS. BREEN: Right.

25 MR. SINAS: Yeah.

Page 22

1 MS. BREEN: Okay. And that's still true, so I

2 won't ask her any further questions if that's true.

3 MR. SINAS: Yeah, there's no work loss claim for

4 Jan, only for Richard.

5 MS. BREEN: Okay.

6 Q So had this accident not happened, you would have returned

7 within 36 hours; is that true?

8 **A Yes.**

9 Q Okay. So this was like your last hurrah and return back to

10 Michigan?

11 **A (Nodding head in affirmative)**

12 Q And you heard your husband testify that you probably would

13 have returned back in the November 2014 had you not been in

14 the accident; is that true?

15 **A Correct. Either November or December. We are real -- we're**

16 **kind of -- we don't have to worry. We just go when we feel**

17 **like it.**

18 Q Okay. But because of the accident, you didn't return until

19 around Labor Day; right? Or is your memory different than

20 your husband's?

21 **A Oh, you mean for the summer?**

22 Q Yeah.

23 **A No. We did not come home for the summer.**

24 Q Right. And in 2014 you were planning to go back in May

25 2014, --

Page 23

1 **A Yes.**

2 Q -- but you ended up staying the summer and you returned to

3 Michigan around Labor Day; does that sound right?

4 **A Yes.**

5 Q Okay. And then you ended up going back a few weeks later

6 from what I understand your husband testifying -- does that

7 sound about right? -- to Florida?

8 **A Right. We were home September, October. I don't remember**

9 **when we went back. I don't remember if it was November or**

10 **December. There are just a lot of things I can't remember.**

11 **I don't know. I know we were here at least September and**

12 **October, but I don't know exactly when we went back.**

13 Q Okay. And then you stayed again through June 2015; does

14 that sound right?

15 **A Stayed in Florida, yes.**

16 Q And when you go to Florida, you have every intention to

17 return to Michigan; right?

18 **A Oh, yes.**

19 Q Okay. Now, on the day of the accident, what do you recall

20 you were doing before the accident?

21 **A We had been out for dinner with our daughters and their**

22 **husbands, and we were celebrating our anniversary and saying**

23 **goodbye to them because we were going back to Michigan.**

24 Q Before you went to the dinner, do you remember what you were

25 doing?

Page 24

1 **A Oh, I do. We were -- I was packing, yes.**

2 Q Was there any --

3 **A That was a Sunday.**

4 Q Okay. It was a Sunday?

5 **A Yeah, it was a Sunday, and I was packing all weekend. We**

6 **didn't do much of anything.**

7 Q So you guys hadn't gone out before that?

8 **A During the day?**

9 Q Yeah.

10 **A To church in the morning.**

11 Q And then you returned and started packing?

12 **A (Nodding head in affirmative)**

13 Q "Yes"?

14 **A Yes. I'm sorry.**

15 Q And approximately what time were you supposed to meet for

16 dinner?

17 **A I don't -- I don't know if it was 7:00 or 8:00. I can't**

18 **remember the exact time. I know that we didn't do it real**

19 **early because we were packing, so I'd say 7:00 or 8:00.**

20 **But I don't know exactly.**

21 Q Did you have reservations?

22 **A Yes, we did.**

23 Q At what restaurant?

24 **A At Trulock's in Naples.**

25 Q And how long were you at the restaurant?

Page 25

7 (Pages 22 to 25)

1 A A couple -- two or three hours. I'm not sure. I know that
2 we were coming home, and the accident was 11:00-ish maybe.
3 I can't remember the exact time, but it was --
4 Q Late?
5 A Uh-huh (affirmative).
6 Q "Yes"?
7 A Yes. Sorry.
8 Q I know what you're saying, but the judge doesn't.
9 A And we were about a -- yeah. And we were about a half hour
10 from the restaurant, so I guess we probably left there about
11 10:30, but I don't know exactly. I mean, that's kind of
12 around the time.
13 Q Were you drinking alcohol?
14 A We had champagne.
15 Q How much did you have to drink?
16 A I had a glass of champagne.
17 Q Do you know how much your husband had to drink?
18 A He had a glass also.
19 Q Do you know what type of champagne?
20 A I have no idea.
21 Q Was that at the beginning of the dinner?
22 A Yes, and through the dinner.
23 Q That's all you guys had to drink?
24 A No. I think the guys had some beers or other drinks. I
25 don't know if my daughters did or not.

Page 26

1 Q Okay. How about you? Did you have anything else?
2 A No.
3 Q Did your husband have anything else?
4 A No.
5 Q Okay. Before you went to dinner, did you and your husband
6 have any celebration drinks?
7 A No.
8 Q Do you -- were you on any mind altering medication at the
9 time of the accident?
10 A No.
11 Q How about your husband, if you're aware?
12 A No.
13 Q So at about 10:30-ish you think you left the restaurant to
14 go home. Is it true your daughter and your son-in-law were
15 in the car?
16 A Yes.
17 Q And their names are?
18 A Rachel Lawrence and Justin Lawrence.
19 Q Do you know if anybody saw this vehicle coming when it hit
20 you?
21 A None of us in the car saw it, but we were told after the
22 fact that the person next to us went forward, and he was
23 almost hit in the back. I don't know if that came from him,
24 if he was talking to the girls after the accident. I don't
25 know where that came from, but that's all I had heard.

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1 Q Do you remember the accident at all?
2 A I really don't remember it. I remember driving up to the
3 intersection.
4 Q Okay.
5 A And we were all talking. And I don't know that I recall the
6 accident. I think I recall it more in my dreams, like I
7 wake up with these nightmares.
8 Q Uh-huh (affirmative).
9 A But I don't think I really recall the accident itself, only
10 that way because I couldn't remember it, you know, right
11 after.
12 Q Right.
13 A So, you know, I just remember a loud crash and I remember
14 horrendous spinings, but then I don't remember anything
15 until --
16 Q Your vehicle spinning?
17 A Oh, yeah.
18 Q Okay.
19 A And white --
20 Q And you don't remember seeing the vehicle come at you
21 though?
22 A No; no.
23 Q Do you remember if the light was green for you?
24 A I don't, because I wasn't -- I wasn't driving, so I wasn't
25 really paying attention to that.

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1 Q Do you know if you had been stopped at a light and started
2 going when this vehicle hit you?
3 A I don't remember.
4 Q You don't remember. Okay.
5 A That's -- I mean, that's possible. I don't remember.
6 Q Do you know if your husband was on his cell phone or
7 anything at the time?
8 A Oh, no, he wasn't.
9 Q Did you have your seatbelt on?
10 A Yes.
11 Q Did your husband have his seatbelt on?
12 A Yes.
13 Q How about the people in the backseat, did they have their
14 seatbelts on?
15 A You know, I don't remember.
16 Q Do you know what speed the vehicle was going that you were
17 in?
18 A No. I don't, because I wasn't driving, but typically on
19 that section it's, like, 40, maybe 45.
20 Q Do you know what lane you guys were driving in when the
21 accident occurred? Was it the left lane or the right lane?
22 A I don't remember.
23 Q You heard your husband describe the route. Do you agree
24 with the route that he took where he explained it as north,
25 east and north again and east?

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8 (Pages 26 to 29)

1 A Yeah. We went 41 and then north, yeah, to Radio and then --
 2 Q Okay.
 3 A Yeah; correct. I do remember.
 4 Q Do you remember if your air bags deployed?
 5 A Oh, yeah; yeah. Because there was white and there was a
 6 smell, like a burning.
 7 Q Do you know if you lost consciousness at all?
 8 A I'm not sure. It could have been -- something happened,
 9 either I lost consciousness or I was just out, because I
 10 couldn't get out of the car and my daughter had to climb in
 11 and open my door and she had to unbuckle me from the
 12 seatbelt. I remember that. Because I couldn't do it. I
 13 didn't know how.
 14 Q So your daughter had to get out and get you out of your
 15 seat?
 16 A She got her husband out first. He was -- he needed help
 17 getting out of the car because he was injured, too. And
 18 then she came around to my window and told me to get out.
 19 So there was a space of time, but I don't know how long.
 20 And then she got me out, and then we walked around to Dick's
 21 side. And by the time we got around there, they were -- the
 22 EMT's were there.
 23 Q Okay. Did you notice that your husband was not conscious?
 24 A Yeah. He was --
 25 Q He wouldn't respond?

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1 A He was out. He looked like he was dead. His head was back
 2 and his mouth was open. He was white, white, white, white.
 3 Q Did you get any response out of him before he was put in the
 4 helicopter to leave?
 5 A He was aroused but not talking coherent. You know, like,
 6 they were asking him questions and he wasn't -- and then he
 7 was out again.
 8 Q So you don't recall seeing the driver come at you?
 9 A Unh-unh (negative).
 10 Q "No"?
 11 A "No."
 12 Q And you recall hearing the noise, and then you recall an
 13 odor that you're assuming came from the air bags; correct?
 14 A Right. But, you know, I don't remember that from before.
 15 I'm just remembering that recently.
 16 Q Uh-huh (affirmative).
 17 A And again I don't know if it's the dreams I -- I mean, the
 18 dreams are so vivid.
 19 Q Uh-huh (affirmative).
 20 A I mean, it's like I'm right there.
 21 Q Okay.
 22 A I don't remember a lot of that from early on.
 23 Q Okay. And you can't tell me how fast your vehicle was
 24 going?
 25 A No.

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1 Q You can't tell me if you had a green light or a red light?
 2 A No.
 3 Q You can't tell me whether you were stopped and going?
 4 A No.
 5 Q Okay. Was anybody on the cell phone in the car?
 6 A No, I don't think so.
 7 Q Was anybody messing with the radio?
 8 A No.
 9 Q Did you guys have any food in the car that you were eating
 10 or anything?
 11 A No; no.
 12 Q Showing pictures?
 13 A No.
 14 Q Okay. Were you just discussing things?
 15 A Uh-huh (affirmative).
 16 Q "Yes"?
 17 A We were just talking on the way back about our trip back to
 18 Michigan and when the girls were going to come visit.
 19 Q And then bang?
 20 A And then I don't remember, yeah.
 21 Q Okay. Do you remember at all what side of the car was hit?
 22 It was your husband's; right?
 23 A Do I remember that that -- no. I remember, because I saw
 24 the car.
 25 Q Uh-huh (affirmative).

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1 A But at the time, I had no idea.
 2 Q Okay. And you recall spinning. Do you know how many times
 3 you spun?
 4 A Again this is something -- and again I don't know, because I
 5 don't remember from early on. But I remember going like two
 6 times, and then I remember thinking we were going to flip,
 7 and that's the last thing I remember. But I don't think we
 8 really flipped.
 9 Q Okay. And you don't know what lane your vehicle was in when
 10 you got hit either? You don't know if it was the left or
 11 right; correct?
 12 A No, I don't know.
 13 Q And so do you know where your car ended up? Was it in the
 14 opposite direction, in the opposite lane, on the shoulder?
 15 A When I got out of the car and I was walking around, I had no
 16 idea where our car was. I mean, I had no idea if it was in
 17 the same street that we were on or the cross street.
 18 Q Uh-huh (affirmative).
 19 A And I still have no idea. Walking around I was so
 20 disoriented. Now, the -- what do they do at the scene,
 21 report?
 22 Q The reconstruction or accident investigation, forensics?
 23 A Yeah. It was a report of the -- yeah. I think that said we
 24 were --
 25 Q The police report?

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9 (Pages 30 to 33)

1 A Yeah, the police report. But I don't even remember that.

2 No, I don't remember.

3 Q Okay.

4 A I know I read that, but I don't remember.

5 Q All right. So you don't have any personal knowledge as to
6 where your vehicle ended up?

7 A Unh-unh (negative).

8 Q You don't know -- and that's "no" for the record; right?

9 Because you're going "unh-unh," and that's not correct.

10 A Oh, I'm sorry. "No."

11 Q That's "no" for the record; right?

12 A "No" for the record. Sorry.

13 Q And so --

14 A I do know all I remember is looking at the car and the whole
15 front left tire and axle -- half of the axle were missing.
16 And I remember somebody coming up and saying, "It's way down
17 there." So it had gotten hit so hard that the axle had
18 bent, and the tire and the axle had flown down the road.
19 That, I remember. I remember somebody saying that to us at
20 the scene. I don't know who it was, whether it was the
21 policeman or -- and I just remember looking. That, I do
22 remember.

23 Q Okay. All right. So if we really want to know the details
24 of this accident, we'd probably have to hire an accident
25 reconstructionist or somebody or even ask the police

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1 officers; right?

2 A What happened, right.

3 Q Do you know if your daughter and/or her husband have a
4 recollection?

5 A No, they don't.

6 Q Okay. So you've discussed it with them and they can't
7 remember what happened either?

8 A Right; right. I mean, it just happened so fast.

9 Q Okay. So it might not be that great to take their
10 deposition; they're probably not going to fill in many
11 details?

12 A (Shaking head negatively)

13 Q Okay.

14 A There were witnesses at the scene, though, that have a whole
15 lot more information.

16 Q Do you know any of their --

17 THE WITNESS: I think you have the witness names,
18 don't you?

19 MR. SINAS: They might have been on our witness
20 list, but they're in the police report.

21 A Yeah, they are in the police report.

22 Q Have you talked to any of the witnesses?

23 A No.

24 Q Okay. So you don't really know what they are going to say
25 or what they didn't say?

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1 A Unh-unh (negative).

2 Q Okay. And that's a "no" for the record?

3 A "No."

4 MR. SINAS: Torree, just so you know, it's a clear
5 liability case, as far as we understand. I mean, there's
6 nothing about the way the accident occurred that indicated
7 there was anybody else at fault other than the other driver.

8 MS. BREEN: Well, I guess I'm trying to figure
9 out, you know, the severity of the --

10 MR. SINAS: I understand. I'm just -- because we
11 don't have the police report, I'm just telling you, though,
12 that it pins the blame on the other driver.

13 MS. BREEN: Yeah. I don't know if I have it
14 confirmed that he's uninsured either. I don't know if
15 that -- I think that was one of the issues that we had.

16 THE WITNESS: He was insured but only --

17 MR. SINAS: Minimally.

18 THE WITNESS: -- \$10,000 or something.

19 Q Did you guys settle with him for that 10,000?

20 A I don't know. You'd have to ask Mr. Spivey. I have no
21 idea.

22 Q Do you recall signing any settlement agreements and you
23 getting \$10,000?

24 A No.

25 MR. SINAS: I don't think that happened.

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1 A Well, the insurance paid -- his insurance did pay. When we
2 were in the emergency room, I know my husband and I each
3 had, like, seven MRI's -- or, I mean, not MRI's, CAT
4 scans -- six; six. And I do know that, when the payment
5 came through -- oh, wait, I might be confused. I am. That
6 was my insurance that paid some.

7 Q Allstate?

8 A I don't think -- yeah. I don't think his paid any, yeah.

9 Q Okay. So that was going to be my next line of questions
10 with you, because your husband said that you would know this
11 information. Allstate did pay your medical bills as far as
12 you know?

13 A They paid the PIP that had to be paid, and then -- then it
14 was submitted to our Blue Cross because this is what we were
15 told.

16 Q Uh-huh (affirmative).

17 A It would have to be submitted to our PIP.

18 Q Uh-huh (affirmative).

19 A And then when we talked to somebody up in Auto-Owners, they
20 said, in order -- your insurance policy is that you have to
21 submit it to Blue Cross and Blue Shield first and then to
22 Auto-Owners. So we went from -- we submitted to Allstate,
23 then Blue Cross and Blue Shield and then Auto-Owners.

24 Q Uh-huh (affirmative). Do you know how much money Allstate
25 paid?

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10 (Pages 34 to 37)

1 A I don't, but the attorney does. I know there was --
 2 Q That would be your attorney?
 3 A Oh, wait. Allstate would have only paid 10,000, because
 4 that's our PIP, 10,000 from me. And I guess that's where I
 5 was going with the -- it was CAT scans in the ER. Our
 6 coverage was only enough to cover two CAT scans.
 7 Q Okay.
 8 A And Dick's was only enough to cover half of his or less even
 9 of his helicopter ride. So once those two things were paid,
 10 then nothing has been paid.
 11 Q So he got 10 grand, you got 10 grand on the PIP portions?
 12 A Right.
 13 Q Okay.
 14 A Right.
 15 Q Yeah, that's what Steve and I were talking about earlier.
 16 A Oh, that's what you were talking about?
 17 Q Yeah. We tend to like our Michigan No-Fault system, but --
 18 A Uh-huh (affirmative). Oh, it's horrible there.
 19 Q So then Blue Cross and Blue Shield picked up the rest of the
 20 medical from what you understand?
 21 A Yeah, they've picked up some, not all, and then some have
 22 just sat, you know, waiting and others I've had to pay. And
 23 the documents that you have that I gave Steve today, those
 24 are of the providers that we needed to pay that weren't
 25 going to wait. They needed -- they wanted payment now. So

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1 it was co-pays of whatever. So they're listed on there.
 2 Q Co-pays for office visits, co-pays for hospital stays, that
 3 type of thing?
 4 A Right; right.
 5 Q Okay.
 6 A And then -- right. And that was -- that's listed at the
 7 bottom of that tally sheet. And at the top of the tally
 8 sheet for Dick and I, it's other expenses that we incurred.
 9 Q Do you want to see them?
 10 MS. BREEN: I can mark them all first. We can
 11 mark this as Exhibit 8.
 12 (Deposition Exhibits 8 through 11 marked)
 13 A Okay. This one would be the mileage for Richard, and it's
 14 out here that I took our appointments, and then he
 15 calculated mileage on it, and then I totaled it for him at
 16 the bottom.
 17 MR. SINAS: And again that's an incomplete list.
 18 THE WITNESS: Right.
 19 A Yeah, there may be some missing in here that I didn't get
 20 because I'm --
 21 Q What's Exhibit 9?
 22 A Exhibit 9 is -- oh, this is what I call my tally sheet.
 23 It's the medical expenses -- is this the next one? I think
 24 is that (indicating) mine?
 25 Q Yup.

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1 A Okay. This one needs a thing on it. This one needs to
 2 go -- this one needs to be 10, because it goes right up to
 3 this.
 4 Q Here's another one. Are they --
 5 A But that's me. That's me.
 6 Q Okay.
 7 A This is Dick's. These three go together, so this should
 8 be --
 9 Q I think this one goes with that one.
 10 A This should be 8, 9, and this should be 10.
 11 Q That's 11. And that should go with that (indicating). She
 12 already got the -- there's no paper clips to it. That's the
 13 problem. This sheet goes with this; right?
 14 A That's mine, that's mine, and --
 15 Q Okay.
 16 A -- does it say my name on that one? Yeah; yeah. Yeah,
 17 those three go together, and then this one we don't have a
 18 sticker on yet. That goes with these.
 19 Q Yeah, stick it with Number 9, and she'll pin it together is
 20 what she'll do.
 21 A Okay.
 22 Q And that way we know what we're doing here.
 23 A Okay. So now I need to talk about these. This one was
 24 the -- this one was the mileage sheet, Number 8. That's the
 25 mileage sheet for Dick.

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1 Q Okay. Number 9 is -- it's a incomplete list of bills paid
 2 for Dick, but it gives you an idea of what we've paid so
 3 far. And then this second page for 9, which would be 9A, I
 4 guess -- I don't know -- this is showing where all these
 5 came from.
 6 Q Okay. And that's the spreadsheet?
 7 A Yeah, it's a spreadsheet that goes with it.
 8 Q Number 10?
 9 A And then 10 is my incomplete list of bills paid for Jan.
 10 Q Okay. And that has a spreadsheet as well?
 11 A Yes. And that spreadsheet --
 12 Q Number 11?
 13 A Oh, spreadsheet is with it.
 14 Q Yeah, it's attached.
 15 A Oh, okay. Gotcha. And then 11 is my mileage sheet,
 16 incomplete. And all of these are really incomplete, because
 17 I really haven't had time to go through everything again.
 18 Q Okay.
 19 A I just would try to update my spreadsheets as things would
 20 come in.
 21 Q I'm assuming that you have all the receipts or bills that --
 22 A Yes.
 23 Q -- support your co-pays and the bills; is that what you say?
 24 A I do, yeah.
 25 Q Okay. They're just not attached here?

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11 (Pages 38 to 41)

1 A Right. They're all on my computer. I can --
 2 Q Okay.
 3 A If you need them now, I can do that or need them at a later
 4 date. I've got everything.
 5 Q I trust that Steve will send them to me.
 6 MR. SINAS: I will. I will create a bill chart.
 7 It might be a little while, but we'll do it.
 8 Q All right. Okay. So are there any other facts to this
 9 accident that we've not discussed that you can tell me that
 10 I should know?
 11 A No. Well, only that we had been told the guy was being
 12 chased by the police when my husband said that. We don't
 13 know how fast he hit us. They -- oh, that's the other
 14 thing. I have a real hard time with words. I can't find
 15 the word I need. They -- give me just a minute. They
 16 speculated that he was probably going 85 to 90; that's what
 17 the police said. And they were chasing him, so they had an
 18 idea of how fast he was going.
 19 Q Okay. What injuries do you think you sustained from this
 20 car accident?
 21 A Bad brain injuries. Okay. I can't remember. I get things
 22 confused. I can't remember things from a long time ago and
 23 I can't remember things from five minutes ago, and it's
 24 intermittent. Did you want examples like you asked of Dick
 25 or not?

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1 Q Why don't we go through your injuries first, and then we'll
 2 follow up with --
 3 A I have horrible headaches, bad balance issues. I'm working
 4 on that in physical therapy. I say the wrong words. I
 5 think I'm saying "blue" but I'm really saying "red," and I
 6 will fight you because I know I'm right, and I'm not. And
 7 that was pointed out clearly to me a couple times by other
 8 people besides my husband. I never believed my husband when
 9 he would tell me that, but then other people kind of
 10 confirmed he was right. One issue was we went out to dinner
 11 with friends and we were talking about an accident that this
 12 friend -- or an emergency this friend had at dinner and she
 13 was taken to a hospital, and I said, "You know, when we were
 14 in Italy having this dinner they took her to the hospital
 15 there." And my husband looked at me and said, "We were
 16 never in Italy with them. We were in an Italian restaurant
 17 in California."
 18 Q Uh-huh (affirmative).
 19 A And I would have sworn we were in Italy with them.
 20 Q Uh-huh (affirmative).
 21 A I mean, it's just like it's so real to me that my memories
 22 are kind of messed up.
 23 Q Uh-huh (affirmative). Okay.
 24 A So it was just like a really good Italian restaurant, and I
 25 was thinking it was in Italy but it wasn't. Or I'll say a

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1 color -- well, I won't go into the rest of that but --
 2 Q Uh-huh (affirmative).
 3 A But I do say the wrong words, and I don't realize it, and I
 4 can't find words. It's frustrating, because it takes me a
 5 long time sometimes to get a point across. I can't do
 6 multiple things. Right after the accident I couldn't pay
 7 bills because I didn't know the process that I needed to go
 8 through, because I pay my bills on my computer. I usually,
 9 you know, go in online and look at the bill and review it
 10 against my receipts and pay it and then copy it and put it
 11 in my computer, the payment and the statement, and I
 12 couldn't remember that. I had to actually write it down and
 13 then look at it when I went to pay bills. Now I'm better.
 14 I can pay bills without really looking at that. But that
 15 seems to be when I'm doing something really involved for the
 16 first time, I really have to think about the steps. So I
 17 don't know. I think they called that executive function.
 18 It's kind of screwed up for me. Headaches are really bad,
 19 but they're intermittent, thank God. There were times when
 20 I couldn't even touch the back of my head because it hurt so
 21 bad.
 22 Q You didn't have headaches before the accident?
 23 A No. Never had headaches before the accident. I could count
 24 on my hand the number of headaches in my life, and now I can
 25 have headaches days in a row for weeks at a time, some

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1 really bad, some not so bad. It's just -- it really varies.
 2 If I have -- I also have neck pain in the muscles in my neck
 3 and my back, which is what the physical therapists have been
 4 working with and massage therapist. Both Dick and I have
 5 massage therapy, and that really helps. But those muscles
 6 are really painful at times and sometimes incapacitating
 7 almost, other times not so bad.
 8 Q Uh-huh (affirmative).
 9 A So it's just -- it -- and then the pain goes down my back in
 10 between my shoulder blades and through here (indicating). I
 11 don't know what the pain is, but it happened at the
 12 accident, it happened after that. I don't know if it was
 13 trauma from the seatbelt -- I have no idea -- or if it's
 14 muscular.
 15 Q From your shoulder blades to your sternum?
 16 A Oh, yeah, it just goes all the way through. And I think
 17 it's muscles deep. Because when they work on -- when the
 18 physical therapist works on those muscles, it gets better.
 19 And so that's still an issue. And again that come and goes.
 20 Q You didn't have neck or back pain before the accident?
 21 A No; no. I had some back discomfort that they looked at for
 22 awhile, but I think they thought it could have been related
 23 to -- but it's different than this pain. Like -- what is
 24 it? -- not a hiatal hernia but a -- reflux. Okay. But that
 25 was lower. So I had -- and it went through to my back, but

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12 (Pages 42 to 45)

1 that was a different pain than this is. This is different.
 2 This is really deep, so -- and that's an issue. And then I
 3 have low back pain and sciatica on both. Sometimes it's the
 4 left, sometimes it's the right. They figured -- my physical
 5 therapist again and Dr. Kandel said it may be related to my
 6 knee issue that my whole back is out of whack because of the
 7 way I've had to walk. I had abdominal trauma and that, I
 8 think, was definitely from the seatbelt. It was horrible.
 9 And that's still tender. And I can't wear clothing very
 10 well that constricts around my abdomen because it's still
 11 uncomfortable. But it's not anything like it was initially.
 12 I mean, initially I couldn't even straighten up. My right
 13 hip -- I mean, my left hip is where the seatbelt buckle went
 14 in, and it did something to my hip. I had some trauma to
 15 that hip, and so I'm in physical therapy for that, too. And
 16 then my right knee, which I had a medial and lateral tear on
 17 the knee, and they wouldn't let me have surgery through the
 18 summer. The neurologist didn't want me to have anesthesia,
 19 so we've put it off.
 20 Q Why not?
 21 A He said, with the traumatic brain injury, you don't want to
 22 have anesthesia. It makes you cloudy and -- and, see, when
 23 I went to the neurologist right after the accident, after a
 24 month, after the pain, he put me on, like,
 25 anti-inflammatories like steroids and stuff. And after that

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1 when I started feeling a little bit better, then he had me
 2 on a medication regimen where I had to sleep eight hours a
 3 night, and so he gave me sleeping pills, and then I had to
 4 have medication in the morning that would stimulate my
 5 brain.
 6 Q Uh-huh (affirmative).
 7 A And that -- and he put me on dex-something, and I had to
 8 take that.
 9 Q Okay.
 10 A And so -- and I think I did that for like six months or
 11 more, which really did help my brain. I really was able to
 12 function and learn -- relearn some of that stuff. But
 13 anyway that's why he wouldn't allow me to have surgery
 14 because he said my brain wasn't at a point where I should do
 15 that. And I totally agree with him. I was really foggy and
 16 it was really hard to think and do stuff. So then I had the
 17 surgery finally in December on my knee, and it was doing
 18 better. And then I started having trouble with it again
 19 about a week before I went back for my follow-up from
 20 surgery. And the physician said that he didn't really know
 21 what it was. But the opportunities at this time would
 22 either be surgery again or some injections and even the stem
 23 cell injections he said might work, but we didn't do that.
 24 I mean, we're just -- I'm hoping with physical therapy and
 25 I'm back on physical -- we've been -- both Dick and I have

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1 been on physical therapy since -- I don't even know when we
 2 started. We didn't start right away, because we couldn't do
 3 it -- probably a few weeks after the accident, and then it
 4 was just gradual, easy physical therapy. And now we're
 5 doing more physical therapy, and they're trying to develop
 6 my knee like they're trying to help his shoulder and trying
 7 to help our back and our neck in physical therapy.
 8 Q Okay.
 9 A And so I have the same physical therapist that he had. We
 10 were seeing NASA in Florida, and then in January we started
 11 going to THRIVE Physical Therapy. And then when we've been
 12 in Michigan, we're at Exclusive Physical Therapy. And Scott
 13 Benjamin is the therapist that we've seen there.
 14 Q Okay. Do you treat with all the same doctors as your
 15 husband, too?
 16 A Yes; yes.
 17 Q Okay. Are there any doctors that he failed to mention that
 18 you're treating with?
 19 A Yes. When I came home last summer, not this summer and not
 20 summer -- last fall, I had to be seen in Ann Arbor because I
 21 had symptoms of possible deep vein thrombosis. So actually
 22 I was seen at Sparrow in Lansing first, and then I had to
 23 follow up in Ann Arbor. That's right. So Sparrow Hospital
 24 I was seen at.
 25 Q What symptoms were you having?

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1 A Pardon me?
 2 Q What symptoms were you having?
 3 A At that time I was having pain in my legs bilaterally and
 4 achiness, deep aching and some swelling. And so they did
 5 the Doppler studies at Sparrow. They said, "They look okay,
 6 but you need to be followed up." So that's when I went to
 7 Ann Arbor where my internist is. I also have Dr. McQuillan.
 8 Q Okay. Is that related to the accident?
 9 A The deep vein?
 10 Q Yeah.
 11 A Yeah. And that's why Dr. Kandel wouldn't let us drive home
 12 last summer. He said, "With the type of trauma that you've
 13 had, you are sitting ducks for deep vein thrombosis. And
 14 sitting in a car is one of the worst things you could do."
 15 And we couldn't fly because Dick had a pneumothorax, and you
 16 have to wait, like, six months or something to fly when
 17 that's happened.
 18 Q Okay. And who is your family treating physician?
 19 A Dr. McQuillan.
 20 Q Doctor what?
 21 A McQuillan in Ann Arbor.
 22 Q The same doctor as your husband's?
 23 A Right. You know, we recently, too, have seen an internist
 24 in Florida, both he and I.
 25 Q Uh-huh (affirmative).

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13 (Pages 46 to 49)

1 A Because we were down there after this accident and --
 2 Q And what's that person's name?
 3 A His name is Dr. Perez.
 4 Q What facility is he out of? There's probably a million Dr.
 5 Perez's in Florida.
 6 A That's right. You know what, though? He's got a hyphenated
 7 name. It's Perez-Trepichio. And I have no idea how to
 8 spell that. But, I mean, we just really set up a doctor
 9 there in case we had problems.
 10 Q Is that in Naples?
 11 A Yes. So it wasn't -- he's not our real internist. Our
 12 internist of record is Dr. McQuillan in Ann Arbor.
 13 Q Uh-huh (affirmative).
 14 A But we did see him. So I went to Sparrow and then I went to
 15 U of M.
 16 Q Uh-huh (affirmative).
 17 A So I have U of M doctors from fall. Dr. Watts was one that
 18 I saw follow up.
 19 Q At U of M?
 20 A Yes. He was filling in for Dr. McQuillan, because Dr.
 21 McQuillan was busy that day and couldn't get in. I'm trying
 22 to think of -- oh, I saw Dr. Picone, P-i-c-o-n-e. He was in
 23 Williamston. I had to have my prescription renewed while I
 24 was here, and the prescriptions were prescriptions that you
 25 had to see -- you had to go in and get, so Dr. Picone saw me

Page 50

1 for that.
 2 Q What prescriptions are you on?
 3 A Right now I have Restoril or Klonopin for sleep. I'm trying
 4 the new one, Klonopin. I'm not sure. I don't take it every
 5 night.
 6 Q Okay.
 7 A I probably if I have trouble two or three nights in a row,
 8 then I take it.
 9 Q Uh-huh (affirmative).
 10 A And then I'm on -- I'm not on the Dexedrine anymore.
 11 Q The what?
 12 A I'm not on Dexedrine anymore. I'm on -- oh, my goodness,
 13 what's the name of that drug? It's a relaxer -- muscle
 14 relaxer. It's called -- it might be called Zanaflex. I can
 15 get it out of my purse if you need the name. I carry that
 16 with me.
 17 Q Where do you get your prescriptions at; just CVS and
 18 Walgreens?
 19 A Yes. And in Florida what's the other one? CVS and
 20 Walgreens are across the street. I think I may have gotten
 21 some at -- I think CVS and Walgreens would be the only ones
 22 since the accident.
 23 Q Okay. Where did you get your prescriptions before the
 24 accident; same places?
 25 A Yes. I don't get prescriptions.

Page 51

1 Q Okay.
 2 A I just -- and then I was on Vicodin, which I have. I don't
 3 take -- I just take it when I get really bad, like when I
 4 get a back spasm or neck spasm or a really bad headache.
 5 And that's the other medication. And I think those are the
 6 only three.
 7 Q Okay. Did you have any issues with your knees before the
 8 accident?
 9 A No.
 10 Q How about your hips?
 11 A I don't think so.
 12 Q Do you have any cardiac issues like your husband?
 13 A No.
 14 Q Do you have any family history of Alzheimer's or dementia?
 15 A Not Alzheimer's. My mom had a little vascular dementia, and
 16 I guess they said it was -- she was on estrogen and she was
 17 having a few blood clots.
 18 Q Okay.
 19 A But not Alzheimer's or anything.
 20 Q Did you have any health issues before the accident at all?
 21 A No. I'm very healthy.
 22 Q And the doctor that you would treat with be the Ann Arbor
 23 doctor, McQuillen or whatever?
 24 A McQuillan.
 25 Q McQuillan?

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1 A Uh-huh (affirmative).
 2 Q Did you have any other doctors that you treated with before
 3 the accident?
 4 A My OB-GYN.
 5 Q And who's your OB-GYN?
 6 A Dr. Guerin; Maude Guerin. But, I mean, that was just normal
 7 yearly exams.
 8 Q Are there any other medical providers that we didn't discuss
 9 that you were treating with that your husband wasn't
 10 treating with or vice versa?
 11 A I don't think so.
 12 Q And you treated at the same hospital after the accident;
 13 right?
 14 A Yes.
 15 Q And you were there for overnight and then released?
 16 A Yeah; I was released in the morning, yeah.
 17 Q And were you released with any assistive devices to help you
 18 walk or anything, like walkers, canes, wheelchairs?
 19 A No.
 20 Q Okay. Any braces?
 21 A No. Just my friends.
 22 Q Are either one of you restricted from driving?
 23 A No.
 24 Q Do you have any changes in your vision?
 25 A No.

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14 (Pages 50 to 53)

1 Q How about your ability to smell or taste?

2 A **Not that I'm aware of.**

3 Q Do you perceive yourself as a danger to yourself or others?

4 A **No.**

5 MR. SINAS: I'm going to object to the form of the

6 question. Go ahead and answer.

7 Q Have you been lost since this accident? Like have you gone

8 out somewhere and got lost?

9 A **I usually have a very good sense of direction. And since**

10 **the accident, I sometimes find myself in places and I'm not**

11 **quite sure what direction I need to go in. It's like I have**

12 **to stop and think. I wouldn't say --**

13 Q Find your way back?

14 A **Yeah. I wouldn't say I'm truly lost, but it's like it kind**

15 **of creeps me out that I would even question where I was.**

16 **(Deposition Exhibit 12 marked)**

17 Q Have you seen Exhibit 12?

18 A **Yeah. I don't remember this.**

19 Q Is that your handwriting?

20 A **Yes, it -- what date was this?**

21 Q Is that your signature on the third page? Is that your

22 signature on the third page?

23 A **Yes, it is.**

24 Q That's your handwriting throughout the document?

25 A **No.**

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1 Q Oh, okay. You don't know who wrote that out?

2 A **I don't know. I mean, I'm sure -- I mean, all the**

3 **information is appropriate.**

4 Q Is it right?

5 A **Uh-huh (affirmative).**

6 Q I guess that's the question I want to ask you. You've

7 reviewed it, and is all the information in that correct?

8 A **Yeah, but, see, there's so much I don't remember.**

9 MR. SINAS: If you're going to say about whether

10 it's correct or not, look at it closely.

11 MS. BREEN: Right.

12 MR. SINAS: Read it.

13 MS. BREEN: I'm not going to rush you.

14 **(Witness reviews exhibit)**

15 MR. SINAS: Can I take a second?

16 MS. BREEN: Sure.

17 **(Off the record)**

18 MR. SINAS: So I guess is there a question?

19 MS. BREEN: I asked her if this information is

20 correct that's in this document.

21 A **And it's correct except I don't know the insurance policy**

22 **numbers, if those are correct.**

23 Q Okay.

24 A **But the policy is the Allstate, and the Auto-Owners we do**

25 **have, yes.**

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1 Q Okay. And you would agree with your husband that your

2 daughters down in Florida don't live in that house in

3 Florida at all?

4 A **Correct.**

5 Q It's just you and him when you're down there?

6 A **Correct.**

7 Q Okay. I apologize if I'm repeating anything. I'm not

8 trying to.

9 MS. BREEN: You can just start calling me out on

10 it, Steve, if you want to get out of here.

11 MR. SINAS: Whatever.

12 MS. BREEN: And for the record, Steve, I'm

13 assuming you're giving me the same reservations for this

14 client that you gave me to your last client for the

15 attendant care, replacement services, UM coverage?

16 MR. SINAS: Yes.

17 MS. BREEN: Just in case some other law firm

18 represents them in the future or something, I want to be

19 clear.

20 MR. SINAS: Yes.

21 Q Do you know why your 2014 tax returns haven't been filed

22 yet?

23 A **The accountant that we use typically does the late file**

24 **whatever. He's done that for years with us. I don't know**

25 **why. Probably because he has too many clients. I don't**

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1 **know.**

2 Q Sounds like he's a last minute guy.

3 A **Well, I think he just has too many clients.**

4 Q As long as it doesn't get you any penalties.

5 A **No.**

6 Q You don't know anything about the business arrangement that

7 your husband had with his -- with Dr. Palmer, do you?

8 A **No; no.**

9 Q And can you give me your Social Security number off the

10 record, please?

11 A **Uh-huh (affirmative). XXX-XX-XXXX.**

12 Q Okay. And you gave me the Blue Cross/Blue Shield

13 information that you have.

14 A **I did put that on here, didn't I?**

15 Q Right here (indicating), it's 1; right?

16 MR. SINAS: Yeah.

17 A **Oh, yeah. But that's not the Blue Cross and Blue Shield**

18 **information.**

19 MR. SINAS: You had it up on your computer. If

20 you want to bring it up, your computer.

21 THE WITNESS: Yeah. Let me make sure I put it on

22 here.

23 MR. SINAS: Well, I already copied. You can just

24 read it into the record.

25 THE WITNESS: Oh, that's right.

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15 (Pages 54 to 57)

1 MR. SINAS: Right? Because all you had were those
2 texts.
3 THE WITNESS: Yes.
4 MR. SINAS: Okay.
5 (Witness Reviews Electronic Data)
6 A In 2014 Dick and I together had Blue Cross and Blue Shield
7 of Michigan.
8 Q Uh-huh (affirmative)
9 A That was through Greater Lansing Center for Dentistry --
10 MDA/Greater Lansing Center for Dentistry. The ID number for
11 that policy is 893815401 and the group number is
12 007030843-0000. Starting January of 2015 and through March
13 31st of 2015, I personally had Premium Silver Extra. The ID
14 number on that is 892342551 and the group number on that was
15 007039981-0000. And Dick started on Medicare as of January
16 of 2015, and I started on Medicare as of April 2015.
17 Q Do you know Dick's number for Medicare? I forgot to ask him
18 that question.
19 A I think it's his Social Security number with a A after it.
20 Q Okay.
21 A Would that be on here? I bet it's on here. Yes, it is.
22 Q I didn't realize that you put it on there.
23 A Oh, no. It's a T.
24 Q It's a T?
25 A It's a T.

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1 Q Okay.
2 A XXX-XX-XXXXT.
3 Q Do you have a HICN now?
4 A Do I have -- excuse me?
5 Q Do you have Medicare now, too?
6 A Yes.
7 Q Do you have a HICN, too? Is that on there?
8 A What's a HIC?
9 Q Your HICN number would be your Social Secu- -- your Medicare
10 number that they use.
11 A Oh, it's XXX-XX-XXXXA.
12 Q Okay. So you have an A; he's got a T. Okay. It's called a
13 HIC number. That's how we report things to Medicare.
14 A I wonder why they're different. That's interesting.
15 Q Okay. As we sit here, you don't have the titles of the
16 vehicles, but you're going to try to get those to your
17 attorney. You think you have those?
18 A Oh, I know we have them.
19 Q Okay. And then you gave me registrations for the vehicle
20 that you now own, but you don't -- you think you have
21 registrations for the vehicle that was totalled in this car
22 accident; right?
23 A Uh-huh (affirmative).
24 Q "Yes"?
25 A Yes.

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1 Q And do you know how much money Allstate paid for the
2 vehicle? Your husband couldn't remember.
3 A I don't. I just remember they didn't pay what it was worth,
4 but I don't remember the amount.
5 MR. SINAS: And, Torree, for the record, I have a
6 jump drive here, and I'm just going to read into the record
7 what's on it --
8 MS. BREEN: Okay.
9 MR. SINAS: -- and then give it to you. We have a
10 subfolder within the drive called "Allstate Insurance
11 Policies." It includes the auto policy, the dec page for
12 the auto policy and then a separate document for the
13 umbrella policy. There's also a sub folder for -- it's
14 titled "Dick" for Dick's claims.
15 MS. BREEN: Uh-huh (affirmative).
16 MR. SINAS: And you have the mileage sheets that
17 we gave you, the expense sheets and the incomplete list of
18 out-of-pocket expenses.
19 MS. BREEN: Uh-huh (affirmative).
20 MR. SINAS: There's also a sub file for "Jan" with
21 the same documents. We gave you copies of those documents.
22 MS. BREEN: Okay.
23 MR. SINAS: There's a sub file for "Taxes" that
24 includes five years of tax returns, 2013 through 2009. As
25 we discussed, 2014 has not been finalized yet. I should

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1 note that there's a notepad document within the file. It's
2 titled "Password for Tax Returns." That's because if you
3 open the tax return documents, there's a little password
4 protection on it. And it's just the four digits of Social
5 Security number, the last four digits. And I have that here
6 saved as a notepad file.
7 MS. BREEN: Okay.
8 MR. SINAS: Also we have a sub file for
9 "Registrations" for the vehicles, which includes the Lexus
10 GX registration that expires January 2016, the title for the
11 2011 Mercedes, the registration for the 2011 Mercedes that
12 expires in April of 2016, and the 2014 registration for the
13 white Lexus. And that's it as far as the registration
14 documents in that file. The documents that you have copies
15 of are in addition to those documents.
16 MS. BREEN: Okay.
17 MR. SINAS: So we'll get you the other title
18 information, but I'll go ahead and give you the flash drive
19 right now.
20 MS. BREEN: Okay. Thank you. I appreciate you
21 doing all that.
22 Q And at the time of the accident, did you have any disability
23 insurance that would kick in to pay you any disability
24 benefits?
25 A No.

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16 (Pages 58 to 61)

1 Q Okay. Did you tell me who your employer was before the
2 accident when you were employed? I know you said you worked
3 for Dick, but --
4 A Yeah. Well, I saw patients at Care Free Medical Center, but
5 that wasn't an employer. I volunteered there --
6 Q Oh, okay.
7 A -- as a medical provider.
8 Q Where was your last job in which you were employed?
9 A It would have been with Dick, at Dick's office, because I
10 was there for many years.
11 Q Okay. Have you ever filed for bankruptcy?
12 A No.
13 Q Have you ever been convicted of a crime?
14 A Nope.
15 Q I don't know if I asked you those questions. I might have.
16 A You didn't.
17 Q I might have already.
18 A No, you didn't.
19 Q Treat with any chiropractors?
20 A No.
21 Q Any other orthopedics or neurosurgeons that we haven't
22 talked about?
23 A Only even I haven't talked about Dr. Kagen, but he's my
24 orthopedic doctor also.
25 Q Right; yeah.

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1 A So, no, not other than the two of them.
2 Q Are you treating with any psychiatrists or psychologists?
3 A Just Dr. Schengber.
4 Q Can you spell that for the court reporter?
5 A S-c-h-e-n-g-b-e-r.
6 Q And what are you treating with that doctor for?
7 A We saw him after the accident for PTSD and just evaluations,
8 and then he had us -- I think Dick mentioned all of the
9 things he wanted us to do, which we do the games and the --
10 Q Okay.
11 A And then --
12 Q And he's located in Florida?
13 A Right. And then he -- we had to go back, and we did
14 relaxation techniques with him and sleep techniques.
15 Q Okay. Do you guys have a general practitioner in Florida
16 that you use?
17 A Only that Dr. Perez-Trepichio.
18 Q Okay.
19 A I think T-r-e-p-e-c-h-i-o or something. But again he's just
20 a brand new physician since this accident.
21 Q Okay.
22 A We've just seen him kind of because we feel like we need
23 somebody in Florida.
24 Q Did you treat at any urgent care centers or anything like
25 that?

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1 A In Florida?
2 Q Yes.
3 A No.
4 Q How about Michigan?
5 A Well, only in the emergency room at Sparrow.
6 Q Okay.
7 A Which was right after we got back from our trip back last
8 September.
9 Q Okay. Are you engaged in physical therapy still then for
10 your knee?
11 A Yes. Well, for my knee and my back and my shoulders, my
12 hip.
13 Q Okay. Are you treating with any occupational therapists?
14 A No, but we did in Florida.
15 Q How about speech therapists?
16 A No.
17 Q Okay. And where do you get your massage therapy at?
18 A It's called -- gosh, why can't I remember? Therapeutic
19 Massage and BodyWorks, I think is what it's called. Her
20 name is Gina, and it's a long Greek name. I don't know how
21 to say her last name.
22 Q Is that in Michigan?
23 A No, that's in Florida.
24 Q Is that Naples?
25 A Yes.

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1 Q Have you done any massage therapy here in Michigan?
2 A No.
3 Q Is there anybody else that you can think of that you've been
4 treating with that we haven't discussed already?
5 A I don't think so.
6 MS. BREEN: Okay. I guess I don't have anything
7 further at this time.
8 THE WITNESS: I don't have to think anymore.
9 MR. SINAS: Jan, I have a couple quick questions.
10 EXAMINATION
11 BY MR. SINAS:
12 Q When you made the arrangements to insure the new vehicle
13 down in Florida with the Allstate insurance policy, did you
14 think that you were somehow negating your insurance coverage
15 through Auto-Owners here in Michigan?
16 A No.
17 Q That was never your understanding of the situation?
18 A Unh-unh (negative).
19 Q Did anybody ever tell you that you were somehow voiding your
20 No-Fault coverage or somehow not covered by Michigan
21 No-Fault because you had your vehicles down in Florida?
22 A No.
23 MR. SINAS: Thank you. Nothing further.
24 MS. BREEN: I have nothing.
25 (Deposition concluded at 2:56 p.m.)

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17 (Pages 62 to 65)

Exhibit I

- (1) a loss, after the date on which the deceased **injured person** died, of contributions of tangible things of economic value, not including services, that **dependents** of the deceased **injured person** would have received for support during their dependency upon the deceased **injured person** during the first three years after the date of the **motor vehicle accident**; and
- (2) expenses reasonably incurred by the **dependent**, not exceeding \$20 per day, to obtain ordinary and necessary services to replace those the deceased **injured person** would have performed during the first three years after the date of the **motor vehicle accident**:
 - (a) without any compensation; and
 - (b) for the benefit of his or her **dependents**.

2. EXCLUSIONS

We will not pay personal injury protection benefits for:

- a. **bodily injury** sustained by an **injured person** who intentionally caused the injury to himself or herself.
- b. **bodily injury** if the **injured person**:
 - (1) other than the **named insured**, is entitled to benefits as a **named insured** in any other insurance policy providing benefits under Chapter 31 of the Michigan Insurance Code;
 - (2) is the **owner** or registrant of a **motor vehicle** or **motorcycle** involved in the **motor vehicle accident** for which the security required by Chapter 31 of the Michigan Insurance Code was not in effect when the accident occurred;
 - (3) was using a **motor vehicle** or **motorcycle** which he or she had taken unlawfully, unless the **injured person** reasonably believed he or she was entitled to take and use the vehicle; or
 - (4) is not a resident of Michigan and he or she was **occupying** a **motor vehicle** or **motorcycle** not registered in Michigan. This exclusion does not apply if such **motor vehicle** or **motorcycle** is insured by an insurer who is in compliance with section 3163 of Chapter 31 of the Michigan Insurance Code and the **motor vehicle accident** or **motorcycle accident** occurs in Michigan.
- c. **bodily injury** arising out of the ownership, operation, maintenance, or use of a parked **motor vehicle** unless:

- (1) the **motor vehicle** was parked in such a way as to cause unreasonable risk of the **bodily injury**; or
- (2) the **bodily injury** was a direct result of physical contact with:
 - (a) equipment permanently mounted on the **motor vehicle** while the equipment was being operated or used; or
 - (b) property being lifted onto or lowered from the **motor vehicle** in the loading or unloading process; or
- (3) the **bodily injury** was sustained by the **injured person** while **occupying** the **motor vehicle**.

No coverage applies for **bodily injury** described in c.(1), c.(2) and c.(3) above if benefits under the Michigan Workers Compensation Law, a similar law of another state, or a similar federal law are available to the **injured person** and the **bodily injury** was sustained in the course of employment while either:

- (1) loading, unloading, or doing mechanical work on a **motor vehicle** unless the injury arose from the use of another **motor vehicle** that was not being loaded on, unloaded from, or secured to a **motor vehicle** as cargo or freight; or
- (2) entering into or alighting from the **motor vehicle** unless:
 - (a) the **bodily injury** was sustained while entering or alighting from the **motor vehicle** immediately after the **motor vehicle** became disabled; and
 - (b) the injury arose from the use or operation of another **motor vehicle** that was not being loaded on, unloaded from, or secured to a **motor vehicle** as cargo or freight.
- d. **bodily injury** sustained by an **injured person** outside of Michigan unless:
 - (1) the **injured person** was **occupying** the **insured motor vehicle**, the **motor vehicle accident** occurred within the United States, its territories, and possessions or Canada, and if other than the **named insured** or **relative** is not entitled to benefits as a **named insured** or **relative** in any other insurance policy providing benefits under Chapter 31 of the Michigan Insurance Code.
 - (2) the **injured person**:
 - (a) is a **named insured** under this insurance policy; or
 - (b) is the spouse or **relative** of such **named insured**.
- e. **bodily injury** sustained while **occupying** a

motor vehicle for which the **owner** or registrant is not required to provide Michigan no-fault benefits and which is operated by the **named insured** or a **relative** outside Michigan. This exclusion does not apply to the **named insured** or a **relative**; nor does it apply to medical or funeral expenses.

- f. **bodily injury** sustained by the **named insured** or a **relative** while occupying a **motor vehicle** owned or registered by:
 - (1) the **named insured's** employer;
 - (2) the **named insured's** resident spouse's employer; or
 - (3) any **relative's** employer
 for which Michigan no-fault benefits are in effect.
- g. **bodily injury** sustained by an **injured person** while occupying a **motor vehicle** temporarily or permanently located as a residence or premises.
- h. **bodily injury** sustained by an **injured person** while a passenger in the **insured motor vehicle** if the **insured motor vehicle** is a:
 - (1) school bus, as defined by the department of education, providing transportation not prohibited by law;
 - (2) bus operated by a common carrier of passengers certified by the department of transportation;
 - (3) bus operated under a government sponsored transportation program;
 - (4) bus operated by or providing service to a non-profit organization;
 - (5) taxicab insured as prescribed in section 3101 or 3102 of Chapter 31 of the Michigan Insurance Code; or
 - (6) bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.
 The exclusion does not apply if the passenger is not entitled to personal injury protection benefits under any other policy.
- i. **bodily injury** sustained by any person other than the **named insured** or a **relative**, while occupying, or through being struck by a **motor vehicle**, other than an **insured motor vehicle**, which is being operated by the **named insured** or a **relative** if the **owner** or registrant of the **motor vehicle** has provided the security required by Chapter 31 of the Michigan Insurance Code.
- j. **bodily injury** sustained by the **named insured** while occupying, or through being struck by while not occupying, any **motor vehicle** owned or registered by the **named insured** and which

does not maintain an insurance policy providing benefits under Chapter 31 of the Michigan Insurance Code.

- k. that portion of any benefits which duplicate any benefits the **injured person** receives or is entitled to receive under:
 - (1) the laws of any state; or
 - (2) the laws of the federal government.

3. LIMIT OF LIABILITY

- a. The Limit of Liability is not increased because of the number of:
 - (1) **motor vehicles** shown or premiums charged in the Declarations; or
 - (2) claims made or suits brought; or
 - (3) **motor vehicles** involved in the occurrence; or
 - (4) policies applicable to the loss.
- b. The Limit of Liability for funeral or burial expenses shall not exceed \$2,000.

SECTION III - PROPERTY PROTECTION INSURANCE

1. COVERAGE

We will pay property protection insurance benefits for accidental damage to tangible property consisting of physical injury to or destruction of the property, including loss of use of the injured or destroyed property, which arises out of the ownership, operation, maintenance, or use of:

- a. an **insured motor vehicle** as a **motor vehicle**; or
- b. a **motor vehicle** operated by the **named insured** or a **relative**:
 - (1) that is not owned by the **named insured** or a **relative**;
 - (2) to which the Property Damage Liability Coverage of the policy applies; and
 - (3) for which the security required by Chapter 31 of the Michigan Insurance Code was not in effect.

2. EXCLUSIONS

Property protection insurance benefits do not apply to:

- a. damage to vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power. This exclusion does not apply when the vehicle is parked in a manner as not to cause

Exhibit J

STATE OF MICHIGAN
COURT OF APPEALS

RROK GURAJ,

Plaintiff-Appellee,

v

CONNECTICUT INDEMNITY INSURANCE
COMPANY,

Defendant/Third-Party Plaintiff-
Appellee,

and

LEGION INSURANCE COMPANY,

Third-Party Defendant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Third-Party Defendant-Appellant.

Before: Murray, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendant Auto Club Insurance Association (ACIA) appeals the trial court's order that denied its motion for summary disposition and its subsequent order that awarded plaintiff \$122,991.44 in personal injury protection (PIP) no-fault benefits, including stipulated medical expenses, replacement services, and lost wages. We reverse.

I. Facts and Procedural History

On September 29, 2000, plaintiff was injured in a motor vehicle accident in Indiana while he was hauling coiled steel for Northern Steel Transport Company. Though plaintiff was a Michigan resident, had a Michigan driver's license, and was driving a semi-truck that was purchased in Michigan, he registered the semi-truck in Oklahoma. Connecticut Indemnity Insurance Company insured the truck under a policy that provided for non-trucking liability and

Michigan no-fault coverage, but excluded coverage if the vehicle was "under motor carrier direction, control or dispatch, or used to carry property in any business." Plaintiff does not dispute that he was operating the truck under dispatch at the time of the accident. The trailer that plaintiff was carrying at the time of the accident was insured by Legion Insurance Company (Legion) under a policy that included a certification of Michigan no-fault coverage pursuant to MCL 500.3163. In addition to the semi-truck, plaintiff owned two personal vehicles, both of which were insured by ACIA under Michigan no-fault policies.

On July 3, 2001, plaintiff filed this action against Connecticut to recover first-party PIP benefits under Michigan's no-fault act, MCL 500.3100 *et seq.* because he maintained that Connecticut was the insurer of the vehicle involved in the accident. Connecticut responded on August 20, 2001, by filing a third-party complaint that named ACIA and Legion as third-party defendants. Connecticut asserted that coverage was excluded under its policy because the accident occurred while plaintiff was hauling cargo under dispatch by Northern Steel, and that either Legion, as the insurer of the trailer owned by Northern Steel, or ACIA, as the insurer of plaintiff's personal vehicles, were the responsible parties.

The parties filed motions for summary disposition and the trial court granted Connecticut's and Legion's motions and dismissed them from the case. In its motion, ACIA argued that plaintiff was not entitled to PIP benefits because his semi-truck was required to be registered in Michigan and the coverage required by MCL 500.3101 was not in effect at the time of the accident. The trial court did not decide whether plaintiff had the required insurance coverage in effect on his semi-truck at the time of the accident, but it found that ACIA, as the insurer of plaintiff's personal vehicles, was first in priority to pay no-fault benefits and, accordingly, the trial court denied ACIA's motion. Because Connecticut was dismissed, plaintiff filed an amended complaint naming ACIA as a party defendant on December 3, 2002. The trial court later rejected ACIA's argument that the one-year-back provision of MCL 500.3145(1) barred recovery for any losses that occurred more than one year before December 3, 2002, and instead found that plaintiff's action against ACIA related back to July 3, 2001, the date that plaintiff filed his original complaint against Connecticut.

II. Analysis

This Court reviews the trial court's grant or denial of a summary disposition motion *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation is a question of law which this Court also reviews *de novo* on appeal. *People v Stone Transport, Inc.*, 241 Mich App 49, 50; 613 NW2d 737 (2000).

ACIA argues that plaintiff was required to register his semi-truck in Michigan and, therefore, he is not entitled to recover PIP benefits unless the security required by MCL 500.3101 was in effect at the time of the accident. MCL 500.3113 provides, in pertinent part:

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

* * *

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103^[1] was not in effect.

MCL 500.3101 provides that “[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance.”

Plaintiff does not dispute that he was the owner of the semi-truck involved in the accident, but he suggests that Michigan registration was not specifically required for his semi-truck and notes that an owner is allowed to incorporate in other states. Plaintiff does not assert that he is incorporated, however, or that the highway reciprocity act, MCL 3.161 *et seq.*, is applicable here.

MCL 257.216 provides, with certain exceptions not applicable here, that “every motor vehicle . . . when driven or moved upon a highway, is subject to the registration and certificate of title provisions of this act.” The question of registration is important because this Court has held that “only those vehicles required to be registered in this state are subject to the requirements of the no-fault act.” *Covington v Interstate Sys*, 88 Mich App 492, 494; 277 NW2d 4 (1979). In *Wilson v League Gen Ins Co*, 195 Mich App 705, 708-710; 491 NW2d 642 (1992), this Court implicitly concluded that Michigan residents are required to register their vehicles in the state.

Plaintiff asserts that the Michigan registration requirement does not apply to him because he did not operate the semi-truck in Michigan and, under MCL 500.3102, he was not required to register the semi-truck unless it was “operated in this state for an aggregate of more than 30 days in any calendar year.” However, the 30-day rule in MCL 500.3102 applies only to nonresident owners of vehicles. *Wilson, supra* at 709-710. Here, it is undisputed that plaintiff is a Michigan resident. We conclude that because plaintiff is a Michigan resident, he “cannot then be a nonresident for purposes of MCL 500.3102.” *Id.* Because plaintiff is a Michigan resident and owned the semi-truck, the semi-truck is “a motor vehicle required to be registered in [Michigan].” MCL 500.3101; *Wilson, supra* at 709. Accordingly, under MCL 500.3113(b), plaintiff is not entitled to recover PIP benefits unless the security required by § 3101 was in effect at the time of the accident.

The evidence submitted below failed to demonstrate that the semi-truck had the required security at the time of the accident. When the trial court ruled otherwise, it relied on *Smith v Continental Western Ins Co*, 169 F Supp 2d 687 (ED Mich, 2001), to suggest that Michigan’s no-fault act has the “broader purpose” of providing benefits whenever an insured is involved in a motor vehicle accident, whether or not a registered vehicle is involved. In *Smith*, however, the federal district court’s conclusion that the plaintiff’s personal insurance carrier was first in priority to pay PIP benefits was premised in large part on the fact that the plaintiff there was not a Michigan resident and, therefore, under MCL 500.3101(1), he was not subject to Michigan’s no-fault requirements. Here, plaintiff is a Michigan resident and the nonresident analysis in

¹ MCL 500.3103 applies to motorcycles and is not at issue here.

Smith is not applicable. Plaintiff asserts that it is sufficient that he paid for coverage by Connecticut, even if that coverage was excluded at the time of the accident, but he provides no authority to support his claim that paying for non-trucking coverage is enough to make the coverage “in effect” at the time of a trucking accident. In any event, we conclude that where coverage is excluded, it is “not in effect” for purposes of MCL 500.3113(b).

Legion’s out-of-state policy did not provide coverage for plaintiff’s semi-truck, nor did it specifically provide for no-fault coverage. Though Legion’s policy did include the certification prescribed by MCL 500.3163, such certification only encompasses “accidental bodily injury or property damages, occurring in this state arising from the ownership, operation, and maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies.” Neither condition is applicable here because plaintiff is a Michigan resident and the accident occurred out of state.

Because the evidence demonstrated that plaintiff’s semi-truck was a vehicle required to be registered in Michigan, and that the security required by § 3131 was not in effect at the time of the accident, pursuant to MCL 5113(b), plaintiff is not entitled to be paid PIP benefits. Therefore, the trial court erred in denying ACIA’s motion for summary disposition.

Reversed.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Henry William Saad